

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff :

-vs- : 1:02-CR-157

STEVEN RENNICK, SR. :

Defendant :

Hearing before the Honorable
Magistrate Michael Merz at the United States
District Courthouse, Federal Building, Fifth Floor,
Dayton, Ohio at 9:30 a.m. on Thursday, March 20,
2008, before Paula A. Blosser, a Registered
Professional Reporter and Notary Public within and
for the State of Ohio.

* * * * *

ON BEHALF OF DEFENDANT:

Mr. Lawrence Greger
Attorney at Law

ON BEHALF OF PLAINTIFF:

Mr. Benjamin Glassman
Attorney at Law

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1 JUDGE MERZ: This is Case No.
2 1:02-CR-157 also numbered 1:07-CV-594, United
3 States of America against Steven Rennick, Senior
4 set for hearing this morning to hear evidence on
5 the Defendant's motion to vacate judgment pursuant
6 to 28 U.S.C. Section 2255.

7 Good morning, Mr. Greger, good
8 morning, Mr. Glassman and Mr. Rennick. Is the
9 Defendant ready to proceed?

10 MR. GREGER: We are, your Honor.

11 MR. GLASSMAN: We want to raise
12 two preliminary points real fast. One is it is
13 possible that Mr. Brichler could end up being a
14 witness in this matter so I wanted to raise the
15 issue of his presence here at counsel table.

16 JUDGE MERZ: Mr. Brichler, first
17 of all, I apologize for not acknowledging you this
18 morning.

19 MR. BRICHLER: Good morning.

20 MR. GREGER: I'm going to move for
21 a separation of witnesses. My witnesses are in the
22 hall, your Honor.

23 JUDGE MERZ: If he's likely to be
24 a witness he needs to be separated. Mr. Greger,
25 anything else preliminarily?

1 MR. GREGER: I thought there were
2 two things.

3 JUDGE MERZ: I'm sorry, Mr.
4 Glassman, do you have additional --

5 MR. GLASSMAN: The additional
6 point, your Honor, personal point that I came down
7 with some kind of illness yesterday. If it was
8 anything other than an evidentiary hearing with a
9 lot of witnesses called I would have called in
10 sick. If it becomes a problem I ask the Court's
11 indulgence that I could sit at counsel table if
12 something like that, it becomes a problem.

13 JUDGE MERZ: Thank you.

14 MR. GREGER: I have no objection.

15 JUDGE MERZ: An opening statement?

16 MR. GREGER: I want to thank you,
17 the Court, for giving an opportunity to represent
18 Mr. Rennick. It's both a personal and professional
19 pleasure to have done so. Your Honor, previously
20 this is a man who is in the twilight of his service
21 of a 63-month sentence. His out date is 2008.

22 I believe based on the experience
23 of BOP, I think he should qualify for a half way in
24 June of '08. We are here on March 20th, '08. Two
25 things are fundamentally clear. One, either Mr.

1 Rennick is absolutely innocent or, two, he's
2 absolutely crazy to persist in this motion in the
3 twilight of his 63-month sentence knowing that this
4 Court could vacate, remanded, and he faces the
5 gauntlet again with no guarantees that he would get
6 credit for the time served on the sentence that
7 this Court, I pray, will absolutely vacate and
8 order a new trial.

9 After my interaction now for the
10 past several weeks now going on months, I am
11 convinced that Mr. Rennick is not absolutely crazy.
12 He must therefore be absolutely innocent and with
13 that I'll proceed to present the evidence in
14 support of that contention. Government want to
15 give an opening?

16 JUDGE MERZ: If that's the extent
17 of your opening, that's fine. Mr. Glassman, any
18 opening at this point in time?

19 MR. GLASSMAN: Thank you, your
20 Honor. On behalf of the United States we
21 anticipate that the testimony will reflect that Mr.
22 Rennick received effective assistance of counsel
23 and that he pled guilty voluntarily. Thank you.

24 JUDGE MERZ: Thank you. Mr.
25 Greger, you may call your first witness.

1 MR. GREGER: We call Greg Cohen to
2 the stand.

3 WHEREUPON:

4 GREGORY COHEN,
5 of lawful age, a witness herein, being first duly
6 sworn testified as follows:

7 JUDGE MERZ: State your full name
8 and spell your last name for the record.

9 THE WITNESS: Gregory A. Cohen,
10 C-O-H-E-N.

11 JUDGE MERZ: Before you proceed,
12 Mr. Greger, we have a problem with realtime.

13 (Recess).

14 DIRECT EXAMINATION

15 BY MR. GREGER:

16 Q. Mr. Cohen, are you an attorney licensed
17 to practice law in the state of Ohio?

18 A. I am.

19 Q. How long have you been so licensed?

20 A. Approximately fourteen and a half
21 years.

22 Q. Mr. Cohen, did you represent Wayne
23 Benjamin in United States versus Steven M. Rennick,
24 Senior?

25 A. Yes, I did.

1 Q. Was that venued in the federal district
2 court in Cincinnati, Ohio?

3 A. That's correct.

4 Q. Was that case assigned to Judge Dlott?

5 A. It was.

6 Q. Based on your investigation of the
7 case, how strong of a case did you have in the
8 defense of Mr. Benjamin to the allegations that the
9 government made in the indictment that your client
10 had entered into a drug conspiracy with Matthew
11 Elliott and Steven Rennick, Senior?

12 A. In my humble opinion I believe that was
13 probably the strongest case of all of the
14 defendants charged.

15 Q. Were you, in fact, prepared to start
16 trial on August 18, 2003?

17 A. Sitting at the defense table when the
18 jury was called in, we were ready to go.

19 Q. Mr. Cohen, have you ever in speaking
20 with me used the term locked and loaded to describe
21 how prepared you were on the day of trial?

22 A. That is an expression that I use fairly
23 frequently when I'm ready for trail.

24 Q. Did you describe that in how prepared
25 you were in the defense of Mr. Benjamin to the

1 government's accusations?

2 A. Yes.

3 Q. Did the government ever tender to you
4 prior to the day trial was to begin a proposed plea
5 agreement with a proposed statement of facts?

6 A. No.

7 Q. Did trial actually begin in this case?

8 A. No.

9 Q. Who called, in your expression, a time
10 out to discuss resolution of the case by way of
11 plea?

12 A. United States government.

13 Q. And the United States government was
14 represented by the person of Robert Brichler?

15 A. That is correct.

16 Q. And was there anyone else assigned to
17 the government's case?

18 A. I'm trying to remember who else might
19 have been seated at the table. I can't honestly
20 recall.

21 Q. Was it then your recollection that Mr.
22 Brichler himself took the time out to discuss the
23 resolution of the case by way of plea?

24 A. It was.

25 Q. Was Judge Dlott ready to bring the jury

1 in at the time that Mr. Brichler asked for a halt
2 in the proceedings?

3 A. She was on the bench.

4 Q. Prior to the morning of trial, had
5 there been any plea discussions between the
6 government and your client?

7 A. No, we had always discussed the fact
8 that we were going to trial essentially no matter
9 what. There was discussion regarding sentencing
10 guidelines based on the indictment. Obviously my
11 client knew what was at risk.

12 Q. On the morning of trial -- strike that.
13 Did you then at some point have a discussion with
14 Mr. Brichler about resolving your client's case --

15 A. I did.

16 Q. -- by way of a plea?

17 A. That's correct.

18 Q. It was a package deal and by that I
19 mean, did all three defendants have to plead or was
20 your client permitted to enter into a plea
21 agreement without the other two defendants?

22 A. It was not contingent on the other two
23 defendants entering pleas. It was offered
24 specifically to me. Mr. Brichler turned and
25 addressed me individually as Mr. Benjamin's

1 attorney.

2 Q. Based on your knowledge in preparing
3 the defense of the case, was there a strong
4 personal relationship between Mr. Benjamin and Mr.
5 Rennick?

6 A. Yes, there was.

7 Q. Did it surround the car racing
8 business?

9 A. It did.

10 Q. Let me ask you, what tractor did the
11 government allege was supposedly used to transport
12 marijuana from Arizona to the Southern District of
13 Ohio?

14 A. I'm not prepared to give you the
15 vehicle identification number but it would be the
16 tractor that was in the Hamilton County Sheriff's
17 Department impound lot. I think it may actually be
18 there as we speak today.

19 Q. If I said, Mr. Cohen, to refresh your
20 recollection it's a Freightliner, would that
21 refresh your recollection in that regard?

22 A. It would.

23 Q. And, Mr. Cohen, was there ever anything
24 but the tractor, that being the motor pulling part,
25 there was never a trailer attached to that tractor,

1 was there?

2 JUDGE MERZ: Is your question
3 never?

4 MR. GREGER: Never.

5 THE WITNESS: I am not an expert
6 but I have more than a layman's knowledge having
7 loaded and unloaded trucks for seven years in my
8 youth.

9 BY MR. GREGER:

10 Q. Yes, sir.

11 A. There is a strike plate where the
12 trailer attaches to the tractor.

13 Q. Can we call it a fifth wheel?

14 A. We could. And as it was in photographs
15 and we were prepared to introduce at trial, it was
16 clean.

17 Q. Pristine condition?

18 A. Absolutely. There was nothing on
19 there. There would have had to have been some
20 scoring if you had dropped a trailer into place on
21 that tractor.

22 Q. Any trailer would at least leave some
23 mark on the fifth wheel?

24 A. I have no idea how it could not. It
25 just, again, based on my limited experience with

1 trucks but more than a layman's knowledge.

2 Q. And you had pictures that you were
3 prepared to put forward in front of the jury that
4 indeed indicated that based upon the pristine
5 condition of the fifth wheel, a logical conclusion
6 or at least a very strong inference could be there
7 was never a trailer hooked up to the tractor; is
8 that true?

9 A. That's correct. The pictures were
10 taken by me.

11 Q. Was it the government's contention
12 that, in fact, 500 pounds of marijuana had been
13 transported to the Southern District of Ohio from
14 Arizona by using the tractor portion?

15 A. I think, again, my recollection there
16 were alternative theories. Either there was a
17 trailer used or that it was contained within the
18 living compartment of that tractor. It was a
19 pretty impressive tractor, actually.

20 Q. And so the alternative theories, one of
21 which you were able or prepared to defeat almost
22 immediately would be that it was hauled in a
23 trailer attached to the tractor, true?

24 A. That is true. It got better than that
25 because regional narcotics unit used their drug

1 dog.

2 Q. Let me get to that.

3 A. Okay.

4 Q. I'll phrase that in form of a question
5 that comes a little bit later. Was it the
6 government's contention that your client and Mr.
7 Rennick brought the marijuana back to the Southern
8 District of Ohio from Arizona in that Freightliner
9 tractor?

10 A. Yes, it was.

11 Q. Was there ever a canine search
12 conducted on the tractor portion?

13 A. It was my understanding that, yes, that
14 did take place.

15 Q. Did it take place three times?

16 A. At least twice based on the information
17 provided to us.

18 Q. Was there ever a positive hit by the
19 canine in those two or more searches on the
20 Freightliner tractor?

21 A. Not to my knowledge. We did not get,
22 one of the witnesses who was at a weighing station
23 that they were going to call, I believe, in Mr.
24 Rennick's case. It had nothing to do in my case,
25 also to testify that the vehicle had been searched

1 or tested.

2 Q. Did the government have the paperwork
3 prepared for the pleas or was there a break taken
4 so that the government could, in fact, go out and
5 prepare the necessary paperwork?

6 A. A break was called.

7 Q. To your knowledge did Mr. Benjamin ever
8 speak privately with Mr. Rennick on the morning of
9 trial surrounding the changing of pleas?

10 A. I'm trying to sort out between before
11 we were ready to start for trial and after we took
12 a break. There was a lot of back and forth amongst
13 the lawyers. There were, individuals that were
14 charged spoke to each other without us on occasion.
15 I honestly can't answer that question. I'm not
16 sure if Mr. Benjamin actually had a private
17 conversation with Mr. Rennick.

18 Q. Were you present in a group that
19 included Mr. Gallagher, Matthew Elliott, Ken
20 Lawson, and Steven Rennick, Senior where resolution
21 of the case was discussed?

22 A. Yes.

23 Q. Mr. Cohen, your client's case was
24 resolved by a superseding bill of information, was
25 it not?

1 A. That's correct.

2 Q. Was it your belief based on the
3 strength of your case that you could have caused
4 serious damage to the government's contention that
5 all three of the defendants, Elliott, Benjamin, and
6 Rennick had entered into a drug conspiracy?

7 A. Yes.

8 Q. Do you believe that one of the reasons
9 that Mr. Brichler, the federal prosecutor, entered
10 into plea negotiations because of the strength of
11 your case as against the allegations contained in
12 the indictment?

13 A. I can't speak for the government's
14 position. I suspect having done enough federal
15 work to make it to trial and have a prosecutor even
16 in a state case offer me a deal right before the
17 jury, typically that does mean there is a question
18 of the strength of their case. I guess one would
19 safely assume they were worried about Mr.
20 Benjamin's case which may have an impact on the
21 remaining defendants.

22 Q. Did your investigation in the defense
23 of Mr. Benjamin demonstrate to you that the two
24 Jamaicans that the government was going to present
25 in their case in chief were liars?

1 A. Absolutely.

2 Q. Were the two Jamaicans, Kareem Cole and
3 David Jones, who also had two other aliases --

4 A. Yes.

5 Q. -- do you know whether or not Mr. Cole
6 was testifying on the hope that he would secure a
7 5K substantial assistance motion from the
8 government?

9 A. Well, government doesn't tell us who
10 the witnesses are until they provide the required
11 notice the day before prior to the testimony, but
12 we were all pretty clear that's who they were going
13 to bring to the show were the other two individuals
14 that entered into agreements with the government.

15 Q. Mr. Cohen, let me ask you whether you
16 have ever used the term legal fiction to describe
17 what occurred in the courtroom on the day that your
18 client Wayne Benjamin changed his plea?

19 A. I have.

20 Q. Tell the Court what you mean or meant
21 by the use of that term, legal fiction, to describe
22 what occurred in the courtroom on the day that your
23 client Wayne Benjamin changed his plea.

24 A. Harkening back to law school it's an
25 old common law description of a situation where

1 Court for convenience ends of justice,
2 clarification will allow a fact which may or may
3 not be true in order to resolve an issue. In this
4 instance the legal fiction would be in the absence
5 of any hard evidence Mr. Benjamin was agreeing to a
6 set of facts that would allow him to plead to
7 essentially the lowest charge in the federal
8 sentencing guidelines.

9 Q. So can we, Mr. Cohen, then use legal
10 fiction to describe a means to an end?

11 A. That would be correct.

12 Q. And so -- thank you. Your client had
13 to agree with a statement of facts that was read
14 into the record by the government at the time of
15 change of his plea; is that correct?

16 A. That's correct.

17 Q. The statement of facts that Mr.
18 Benjamin agreed to included the fact that he had
19 received marijuana from Steven Rennick, Senior, the
20 quantity being one pound, correct?

21 A. That is also correct, yes.

22 Q. Did your investigation of this case
23 ever disclose to you that Mr. Rennick had delivered
24 or that Benjamin had received the quantity of
25 marijuana that was in the government's statement of

1 facts?

2 A. No.

3 Q. Do you know the source of the
4 information that was used to substantiate that one
5 pound of marijuana had been given to your client
6 allegedly by Steven Rennick, Senior?

7 A. No.

8 Q. Mr. Cohen, how many federal cases are
9 you aware where the drug quantities were one pound
10 of marijuana?

11 A. None.

12 Q. Let me --

13 JUDGE MERZ: You are always
14 welcome to come and try cases in this Court. We've
15 tried them a tenth of the gram. But that to the
16 aside.

17 BY MR. GREGER:

18 Q. Let me ask whether there were
19 discussions with Mr. Brichler to you and your
20 client concerning the sentence that your client
21 would receive?

22 A. I don't know that we needed
23 discussions. When the plea was offered based on
24 the quantity we knew it was in the zero to six
25 range and knew that our client had a criminal

1 history of one. Essentially his worse exposure was
2 six months.

3 Q. Did Mr. Brichler talk to you about
4 straight probation?

5 A. Not in the context of a plea. What he
6 basically said, your client based on his records is
7 going to get probation in this matter.

8 Q. That's what Mr. Brichler said?

9 A. He did, but it was not in the form, if
10 you plead you get probation.

11 Q. Understanding that he didn't make you a
12 promise, my question is, did he discuss in the
13 presence of your client that he was going to get
14 straight probation based on the federal sentencing
15 guidelines?

16 A. I think, he, yeah, that was some of
17 the, part of the conversation we had because the
18 conversation was right behind the defense table in
19 the courtroom.

20 Q. Mr. Cohen, would it have been
21 malpractice to you for you to have proceeded to
22 trial even knowing that you had a strong case in
23 your opinion when you had a guarantee of probation?

24 A. Malpractice?

25 Q. Yes. I'll strike that question and go

1 back and phrase it a different way.

2 Did you, when you and I spoke
3 indicate that it would be malpractice for you to
4 have proceeded putting everything at risk when you
5 had a guarantee of straight probation in this case?

6 A. Yes, but not, in terms of when a client
7 is offered the opportunity to walk out of the door
8 but you can't tell your client to go to trial just
9 because you, as an attorney, think your case is
10 strong because it's the 12 people sitting in the
11 jury box, those are the ones that decide who is
12 guilty and who is not.

13 Q. And, in fact, had Mr. Benjamin decided
14 to go forward and defend against the accusations of
15 the government, he was looking at a five-year
16 minimum mandatory, was he not?

17 A. That is correct, based on the
18 indictment.

19 Q. Mr. Cohen, did your client, in fact,
20 get probation?

21 A. He did.

22 Q. Has he since passed away?

23 A. Yes, he has.

24 Q. Did you travel to the federal medical
25 center at Lexington, Kentucky to meet with Mr.

1 Rennick?

2 A. I did.

3 Q. What was the purpose of that meeting?

4 A. To discuss the resolution of his claim
5 to recover the tractor from the Hamilton County
6 Sheriff's Department.

7 Q. Were you attempting to make
8 arrangements between each other to represent him in
9 the forfeiture side of the case?

10 A. Yes.

11 Q. Did you actually represent him in the
12 forfeiture side of the case?

13 A. For about ten minutes.

14 Q. Let me ask you, you learned the term
15 legal fiction and referred to the common law. Let
16 me ask whether or not there were other defense
17 counsel, that would be Mr. Lawson or Gallagher or
18 Mr. Goldberg, that used the term fictional plea to
19 describe what occurred that morning?

20 A. No, I don't recall that. I mean
21 fictional plea doesn't make sense to me because
22 when you plea, that's your plea. You are pleading
23 guilty to an offense. There is nothing fictional
24 about that for the defendant.

25 Q. It's what they are pleading to that can

1 be fictional?

2 A. Essentially the legal fiction. Again,
3 legal fiction can't be used to harm another party,
4 a third party. There was no agreement by Mr.
5 Benjamin to testify against Mr. Rennick or anybody
6 else.

7 Q. That was not part of the plea
8 agreement?

9 A. It was not.

10 Q. Do you know whether or not that's
11 because it had to be a package deal, the government
12 was not going to cut Mr. Benjamin loose and then go
13 to the same length of trial to prove the conspiracy
14 with only two defendants, were they?

15 A. Earlier on prior to sitting down for
16 trial, it was, it was pitched to defense counsel
17 this was a package deal. All three of you plead or
18 all three of you go to trial, which I was looking
19 forward to the trial personally.

20 Q. Is the truck forfeited?

21 A. The truck was forfeited.

22 Q. Was the truck forfeited because the
23 court found, in fact, the tractor had transported
24 marijuana from Arizona to the Southern District of
25 Ohio or that proceeds from a racing business might

1 have been used to purchase the tractor?

2 A. Part of the problem was on the title to
3 the vehicle and essentially my role in it was
4 excluded pretty quickly by the magistrate because
5 we couldn't show standing at that time, at the time
6 of the hearing to challenge the state's forfeiture
7 action although it was a federal case. The
8 forfeiture was filed in state court and basically I
9 was excused from the proceedings.

10 Q. Mr. Cohen, let me ask you whether or
11 not, in fact, this case started out in the state
12 system as an arrest of Mr. Rennick and others for
13 possession with intent to distribute 20,000 grams
14 of marijuana?

15 A. It did.

16 Q. And did the Hamilton County Grand Jury
17 return a no true bill on that accusation?

18 A. Mr. Benjamin wasn't charged originally
19 in the state action so I'm not, that does sound
20 right. I can't confirm it but it does seem to ring
21 a bell. We've had a couple of cases since this
22 one.

23 Q. Did you mention or discuss with Mr.
24 Rennick the legal fiction that you have described
25 to the Court here today when you went down to the

1 federal medical center?

2 A. I did.

3 Q. Mr. Cohen, I'm handing you what's been
4 marked for identification as Rennick Exhibit 1 for
5 purposes of the 2255 hearing and I'll ask if you
6 can identify that for the record?

7 A. This is the superseding information
8 that was filed with respect to Mr. Wayne Benjamin.

9 Q. That information was filed with the
10 Court on August 20, 2003?

11 A. That is correct.

12 Q. Did you have that information before
13 you at the time Mr. Benjamin entered his plea?

14 A. We would have done that on the day,
15 probably the day we entered the plea. It would
16 have been proffered to me. I had the plea bargain
17 before I had this to review so it would have been
18 contemporaneous.

19 Q. Do you know if you had this on the
20 morning of August 18, 2003 at the time that you
21 pled?

22 A. Without looking at my file I can't
23 answer that.

24 Q. Do you have any reason to explain why
25 it was filed two days after the plea was accepted

1 and not at or about the time or before the pleas
2 were accepted?

3 A. I'm not certain. I'd have to see the
4 plea form to see when that was filed, if they were
5 all filed contemporaneously.

6 Q. We can agree that the file stamped date
7 on the information is two days after the plea by
8 Mr. Benjamin was made, can't we?

9 A. Yes, we can.

10 Q. Does the defendant have the right to
11 have that document for 24 hours in his possession
12 before he acts?

13 A. The defendant being Mr. Benjamin?

14 Q. Yes.

15 A. Yes. Sure, he does.

16 Q. That period can be waived, can it not?

17 A. It can.

18 Q. Did you even know the exact language of
19 the information and by that I mean what your client
20 was actually pleading to in terms of the statutory
21 citations and the date that he allegedly did the
22 act in question when you pled?

23 A. I did.

24 Q. Did your client get two points for
25 acceptance of responsibility toward his sentencing

1 guidelines?

2 A. He did.

3 Q. Are you sure of that?

4 A. I don't know if it made a difference.

5 I presume he did. I don't have his plea form in
6 front of me. Any person who enters a plea
7 typically gets that. I'm not sure if on this level
8 he qualifies. Anything under 15 he would have
9 gotten a third point.

10 Q. The offense level would have equated to
11 an offense level eight; is that true?

12 A. Eight or six, but I think eight is
13 correct.

14 Q. Acceptance of responsibility would have
15 taken it to six and you still would have fallen
16 into a zone which is a straight probation?

17 A. That's correct.

18 Q. Regardless of whether he had acceptance
19 of responsibility or not?

20 A. Correct. It made no difference.

21 MR. GREGER: Your Honor, I'm going
22 to ask for the Court to conduct an in-camera
23 inspection of the pre-sentence report for the
24 purpose of determining whether Mr. Benjamin got the
25 two points for accepting responsibility and the

1 reason that he didn't get those points, I think, is
2 relevant to this proceeding.

3 JUDGE MERZ: Any objection, Mr.
4 Glassman?

5 MR. GLASSMAN: No, your Honor.

6 JUDGE MERZ: The motion is
7 granted. The Court notes that at least with
8 respect to the pre-sentence investigation report
9 that Mr. Benjamin did not get an adjustment for
10 acceptance of responsibility and the stated reason
11 was that he asserted during the pre-sentence
12 investigation that he did not distribute a pound of
13 marijuana on July 18, 2002 as charged in the
14 superseding information.

15 The Court understands this is
16 merely a recommendation of the probation officer to
17 Judge Dlott and I do not have in front of me
18 documents reflecting Judge Dlott's action on the
19 recommendation but that is recommendation.

20 MR. GREGER: You will, your Honor,
21 at the conclusion of that have that answer and
22 document before you. Thank you.

23 BY MR. GREGER:

24 Q. Do you recall your client persisting in
25 his innocence when he went down to the probation

1 officer to have the officer then take his side of
2 the story?

3 A. I do.

4 Q. That would then necessarily equate, if
5 he's denying he did anything wrong, that would then
6 pretty much eliminate his right to the two points
7 of acceptance of responsibility --

8 A. It would.

9 Q. -- in your experience? I have tendered
10 to you, Mr. Cohen, a portion of the proceedings and
11 particularly the sentencing of your client, Wayne
12 Benjamin, and I'll ask if you could just review the
13 several pages, first. Second, third to, in fact,
14 state that's a true representation?

15 A. It appears to be a true and accurate
16 representation of the proceedings.

17 Q. Let me ask you to turn to page four of
18 that exhibit and I will ask you, what did you mean
19 by the quote, confusing nature of how this process
20 took place, end quote, as you stated that in open
21 court and as it is recorded on page four of
22 Exhibit 2?

23 JUDGE MERZ: At line seven.

24 MR. GREGER: If we get into the
25 context it starts with line five. Mr. Benjamin was

1 not given and then it goes on to conclude that
2 sentence on line ten.

3 BY MR. GREGER:

4 Q. What did you mean by the confusing
5 nature of how this process took place?

6 A. Well, essentially going back to the
7 legal fiction which resulted Mr. Benjamin's
8 criminal situation, his benefit, we are talking
9 about a date that we picked for a transaction that
10 we manufactured to create the legal fiction that
11 allowed the resolution of Mr. Benjamin's case.

12 Q. Well, can we agree that you also
13 created a legal fiction as it relates to what he
14 pled to as he persisted in denying that he had done
15 that to the probation officer?

16 A. Mr. Benjamin was given the opportunity
17 after he entered a plea to withdraw his plea and go
18 to trial. He didn't want to do that so, again,
19 this is as it relates to Mr. Benjamin, not Mr.
20 Rennick.

21 Q. Understood. Let me ask you what you
22 meant by your words, that your client entered a
23 plea to a fictitious date?

24 A. As I stated, we picked a date and a
25 quantity to satisfy his need and not take a risk of

1 going to prison.

2 Q. Who picked a date?

3 A. Best recollection is Mr. Brichler and I
4 discussed a date.

5 Q. Who picked the quantity?

6 A. Government.

7 Q. Your client neither picked the date nor
8 the quantity, is that your testimony?

9 A. That is my testimony.

10 Q. What did you mean by the words, as we
11 do in the law sometimes to facilitate a plea?

12 JUDGE MERZ: This is line ten,
13 same page.

14 MR. GREGER: Thank you. Same
15 page, line ten. Thank you, your Honor.

16 BY MR. GREGER:

17 Q. My question is, what did you mean by,
18 as we do in the law sometimes to facilitate a plea?

19 A. We create a legal fiction which
20 satisfies the needs of justice, that binds only the
21 two parties to dispute essentially. One of the
22 best examples, earlier in my career ready for trial
23 in a case where my client was charged with rape,
24 very serious charge. Been locked up for 89 days.
25 Speedy trial was running, prosecution had a problem

1 with its case. My client was allowed to plead to
2 an assault with credit for time served to resolve
3 his need to get out and avoid going to prison,
4 satisfy state's need for a conviction. The matter
5 was resolved. So I look at this the same way.

6 It does happen occasionally. It
7 is not, Chinese have an expression, chew show,
8 which means eat vinegar. It leaves a bitter taste
9 in your mouth if you are a litigator and a client
10 decides his or her reasons they want to avoid the
11 risk of prison.

12 Q. Do you mean that you permit them to
13 plead to events that have fictitious dates
14 certainly to arrive at a plea?

15 A. This is what I talked about, confusing
16 and difficult nature of this. Do I allow him?
17 It's not for me to allow or disallow. My interest,
18 as long as I'm not committing fraud on a Court, my
19 client is entitled to plead to anything that he or
20 she wants to if that's in their best interest. I
21 cannot interfere with that process, I guess, the
22 answer with a qualified yes, I do.

23 Q. Mr. Cohen, does Exhibit 2 demonstrate
24 that the court accepted the recommendation of the
25 probation officer to deny two points for acceptance

1 of responsibility to your client, Mr. Benjamin?

2 JUDGE MERZ: I direct your
3 attention, sir, to page six line 17 through 23.

4 THE WITNESS: It does appear that
5 the Court adopted the probation department's
6 recommendation.

7 BY MR. GREGER:

8 Q. Let me ask you whether you understood
9 that the date stated by the government as to when
10 Mr. Elliott received 50 pounds of marijuana from
11 Mr. Rennick was likewise a fictitious date?

12 A. I was not involved in that
13 conversation.

14 Q. You do not know whether the date that
15 Mr. Elliott pled to was likewise fictitious?

16 A. I was not his attorney, I was not
17 involved in any plea discussions with him.

18 Q. Is it true that your client could not
19 explain to the probation officer what occurred on
20 the date contained in the information to which he
21 pled because he didn't do anything and particularly
22 didn't do anything on that date?

23 A. I believe that was correct. I was
24 sitting next to him when he made that explanation
25 to the probation officer.

1 Q. What was the actual date then from your
2 investigation where the one pound of marijuana was
3 actually transferred from Mr. Rennick to Mr.
4 Benjamin?

5 A. There was no evidence that there was
6 ever a transaction of that nature, at least in the
7 possession of the government to be transferred to
8 the defense counsel.

9 JUDGE MERZ: Could I have the last
10 question again, please.

11 (WHEREUPON, the requested portion
12 of the record was read.)

13 BY MR. GREGER:

14 Q. What was the source of the information
15 that provided the government with the date of
16 July 18, 2002?

17 A. I have no idea.

18 Q. Regardless of the date, did you have
19 evidence that Mr. Benjamin received one pound of
20 marijuana from Mr. Rennick in your investigation of
21 this matter?

22 A. No, there was no evidence, that's why I
23 was going to trial.

24 Q. Am I correct that the government stated
25 to the court that the one pound of marijuana was

1 the readily provable amount the government had as
2 it related to your client?

3 A. That was their statement.

4 Q. And so if there was, in fact, no
5 evidence that Mr. Benjamin ever received marijuana
6 from Mr. Rennick, one pound of marijuana from Mr.
7 Rennick, regardless of the date, the government
8 stood up in front of a court of law and said;
9 however, that was a readily provable amount for
10 purposes of the plea; is that correct?

11 A. For purposes of the plea, that is
12 correct.

13 Q. To your knowledge the government didn't
14 have any readily provable amount of marijuana
15 transferred from Mr. Rennick to your client, Mr.
16 Benjamin, regardless of the date; is that true?

17 A. As far as discovery provided I cannot
18 tell you who was going to be testifying. We don't
19 know that until we are at trial. They may or may
20 not have had information, but based on my
21 preparation for trial, I don't believe there was
22 ever any credible evidence that Mr. Rennick
23 transferred marijuana to Mr. Benjamin.

24 Q. And, in fact, Mr. Benjamin persisted in
25 denying the substance of the information even to

1 the probation department, in fact, harming himself
2 from getting the two points of acceptance of
3 responsibility; is that true?

4 A. That is true.

5 Q. Do you know then how the government was
6 going to prove, based on your investigation of this
7 matter, that your client and others conspired to
8 distribute in excess of a hundred kilograms of
9 marijuana when the readily provable amount at the
10 time of the plea was one pound? And I'll add on to
11 that, other than through the lying Jamaicans?

12 A. To the extent that you would consider
13 it readily provable, I think it was still all in
14 the context of the plea rather than trial. You
15 have U.S. government by way of an assistant U.S.
16 attorney making allegations which are accepted by
17 my client for the purpose of insuring that he
18 doesn't go to prison causing no harm to anyone else
19 because there was no agreement to testify.

20 Mr. Brichler's statements are not
21 evidence. I do not know, I do not believe they
22 could have proven even a pound, personally.

23 Q. Mr. Cohen, isn't the very system that
24 you are sworn to uphold harmed by the actions that
25 occurred on the morning of August 18, 2003?

1 A. Is the system harmed? You are asking
2 me to answer something that gets into a
3 philosophical debate. I mean the system is the
4 federal system which operates in my mind very
5 similar to the Soviet system when I was behind the
6 iron curtain many years ago where prosecutors are
7 telling defendants, this is what is going to happen
8 to you, the defense attorney merely is seated there
9 to explain to his or her client what the government
10 is about to do to him or her.

11 The judge goes along with it
12 because we have sentencing guidelines. Past couple
13 of years things have gotten a little better. We
14 have returned judges to their primary role of
15 letting them decide what is correct and not correct
16 to sentence within certain constrictions, but what
17 occurred that day does not bring down the system.

18 What occurred that day was what
19 was in the best interest of my client. Again,
20 legal fiction cannot cause harm to others and as
21 there was no agreement to testify against Mr.
22 Rennick or any other defendant in that matter, it
23 was an expediency that I don't think any lawyer can
24 deny his or her client so I don't think it harmed
25 the system.

1 Q. Mr. Cohen, did your client plead guilty
2 of a charge of possession with intent to distribute
3 marijuana?

4 A. He did.

5 Q. Was the basis for that plea that your
6 client received one pound?

7 JUDGE MERZ: I'm sorry?

8 MR. GREGER: I apologize.

9 THE WITNESS: That's not exactly
10 correct.

11 BY MR. GREGER:

12 Q. I withdraw that question. Did your
13 client plead to knowingly, willfully, intentionally
14 and unlawfully distributing approximately one pound
15 of marijuana?

16 A. That is what he pled to, yes.

17 Q. So it was not that he received
18 marijuana from Mr. Rennick, but that Mr. Benjamin
19 had knowingly, willfully, intentionally and
20 unlawfully distributed a pound of marijuana. Is
21 that the basis for the bill of information?

22 A. Yes.

23 Q. Let me ask you then, turn to the bill
24 of information that has been marked as Exhibit 1.
25 If I can ask you did your client distribute

1 marijuana to somebody based upon your investigation
2 of this matter?

3 A. No.

4 Q. Is that then likewise fictional?

5 A. Well, if you're pleading to an
6 information based on a legal fiction, I guess it
7 would be within the statute it implies possession
8 with intent to distribute. So I don't know but it
9 is part of the legal fiction which got us to a
10 criminal history of one with an offense level of
11 eight for a five-year mandatory minimum.

12 Q. Mr. Cohen, let me hand to you what is
13 marked for identification as Exhibit 3 for the
14 Rennick 2255 hearing and I'll ask if you can
15 identify that for the record?

16 A. Copy of the indictment filed against my
17 client and others ultimately.

18 Q. Mr. Cohen --

19 A. My client was added to this, I'm sorry.
20 This was, I guess, the initial indictment which
21 brought Mr. Rennick before the Court.

22 Q. Can we agree that your client, Wayne
23 Benjamin, is not named as a defendant in this
24 indictment?

25 A. We can.

1 Q. Was it your understanding that Wayne
2 Benjamin was one of the, quote, and others, end
3 quote, mentioned on the first page of this
4 indictment?

5 A. I have no clue.

6 Q. Did you learn that Wayne Benjamin had
7 spoken with the government whether by proffer or
8 otherwise, refused to agree with what the
9 government said the evidence would show and was
10 then told by Mr. Brichler that he would be indicted
11 because, in fact, he didn't conform to what the
12 government said the evidence would show?

13 A. We are starting to get into areas of
14 confidential communication between attorney and
15 client so I don't know.

16 Q. Let me ask you, Mr. Cohen, did your
17 client meet with Mr. Brichler?

18 A. He did, prior to my representation.

19 Q. And did he meet with Mr. Brichler
20 before the superseding indictment was filed that
21 named your client as a co-conspirator?

22 A. He did.

23 Q. Mr. Cohen, I'll hand to you what is
24 marked for identification as Exhibit 4 and I'll ask
25 if you can identify that for the record?

1 A. This is the indictment that brought my
2 client into this matter.

3 Q. This is a superseding indictment that
4 adds your client; is that true?

5 A. That is correct, yes, sir.

6 Q. And your client has been delineated in
7 parenthesis on the face of the document as
8 defendant seven; is that correct?

9 A. That's correct.

10 Q. And he would then be the seventh
11 defendant that would be in the Kareem Cole, Steven
12 Rennick, Senior, Steven Rennick, Junior line up of
13 defendants; is that true?

14 A. That is true.

15 Q. Where in this indictment, Exhibit No.
16 4, is it mentioned that your client distributed any
17 quantity of marijuana regardless of the date as an
18 overt act in furtherance of the alleged conspiracy?

19 A. Other than the language of count one
20 where it indicates that he was part of the
21 transportation of marijuana from Arizona to Ohio,
22 there is really no other overt act alleged.

23 Q. Where in that indictment, Exhibit 4, is
24 your client mentioned as having possessed any
25 quantity of marijuana regardless of the date as an

1 overt act in furtherance of the conspiracy?

2 A. There is nothing there.

3 Q. Where in the indictment, Exhibit No. 4,
4 is the date of July 18, 2002 mentioned as the date
5 any overt act in furtherance of the conspiracy
6 allegedly occurred?

7 A. It is not there.

8 Q. How then was the fictitious date of
9 July 18, 2002 agreed upon for the purpose of
10 superseding information?

11 A. It was chosen as a date no different
12 than any other date that served the purposes of
13 both Mr. Benjamin and the U.S. government.

14 Q. So really, based upon the actions that
15 occurred on the morning of trial, any date between
16 January of 2002 and October 16, 2002 would have
17 been perfectly acceptable?

18 A. Yes.

19 Q. Even if nothing actually occurred that
20 was a crime on any date that was randomly selected
21 within that range?

22 A. That's correct.

23 Q. Exhibit 4 alleges that Steven Rennick,
24 Senior purchased a Freightliner in Arizona on or
25 about July 23, 2002. Do you see that?

1 A. Number five?

2 Q. That's part of the overt act in
3 furtherance of the conspiracy?

4 A. Correct.

5 Q. Do you even know if Steven Rennick,
6 Senior was in the state of Ohio on the date that
7 your client stated under oath at his plea that he
8 received a pound of marijuana from Mr. Rennick?

9 A. I have no clue.

10 Q. Is that important to know?

11 A. No.

12 Q. Why is it that your client didn't have
13 to plead to any of the currency violations that are
14 alleged that he committed in the superseding
15 indictment?

16 A. I'm not privy to the decision that was
17 made regarding Mr. Benjamin. I was only advised
18 that this is what their offer was.

19 Q. Well, can we agree if he pled to any of
20 the 1957 violations that he would not have
21 qualified for probation?

22 A. Short of substantial assistance, I
23 think that's correct.

24 Q. Am I correct then a fictional plea was
25 entered into a fictional crime that got your client

1 probation?

2 A. Not necessarily agreeing with your
3 semantics or your choice of words, yes. The plea
4 was very real to my client. He pled to a felony
5 charge.

6 Q. Based on everything that you knew,
7 based on the investigation of the matter and being
8 locked and loaded and ready to try this case, a
9 fictitious crime was created for purposes of a
10 superseding information that then would enable your
11 client to get the probation that you and Mr.
12 Brichler spoke about; is that true?

13 A. That is true.

14 Q. Did you from your investigation of this
15 matter have evidence that the deposits of currency
16 that allegedly occurred by your client were not, in
17 fact, related to any marijuana conspiracy?

18 A. The deposits were probably one of the
19 weaker things in my case, but there was no --
20 government had no evidence or provided no evidence
21 those deposits indeed came from any type of illicit
22 activity.

23 MR. GREGER: If I may have a
24 moment, your Honor?

25 JUDGE MERZ: Yes, sir.

1 MR. GREGER: Thank you, Mr. Cohen,
2 I have no further questions.

3 JUDGE MERZ: Cross?

4 CROSS EXAMINATION

5 BY MR. GLASSMAN:

6 Q. Okay, you represented Defendant Wayne
7 Benjamin, correct?

8 A. That's correct.

9 Q. And Benjamin was charged, you showed up
10 at trial and he was charged with what charging
11 instrument?

12 A. The superseding indictment.

13 Q. Right. And if someone is charged by
14 indictment, what does that mean with respect to the
15 Grand Jury?

16 A. That there had been evidence presented
17 such that a Grand Jury can make a probable cause
18 finding whether or not a crime was committed and
19 that individual charged within the indictment might
20 be involved with the offense.

21 Q. Okay. Now, you have discussed your
22 preparation for trial and how you thought you had
23 relatively strong case, yes?

24 A. Yes.

25 Q. Now, I want to separate between what

1 your personal beliefs were versus all possible
2 facts. Were you aware of any potential evidence
3 against your client, Mr. Benjamin?

4 A. Circumstantial evidence, yes.

5 Q. Possibly testimony?

6 A. I was not worried by any particular
7 testimony.

8 Q. Could there have been witnesses that
9 could have testified against Benjamin? I'm not
10 asking whether you knew of them, I'm asking whether
11 you knew for certain that they were not?

12 A. No, my assumption was Kareem Cole would
13 come in and say whatever he needed to seal his
14 deal.

15 Q. Do you know for a fact whether the
16 government was going to call Kareem Cole as a
17 witness?

18 A. Obviously I didn't get to that point.
19 They were advising he was coming through the
20 deposits.

21 Q. Why did you say the deposits were one
22 of the weaker parts of your case?

23 A. Cash deposits, they don't come with any
24 identifiable product. It's not like depositing a
25 check, there may be some need to rebut the

1 assertion that these were the fruits of criminal
2 proceeds, but Mr. Rennick was in a business where
3 cash was used, long history of making cash deposits
4 to that account made me feel somewhat secure, you
5 know, it was not unreasonable for Wayne who just,
6 Mr. Benjamin hung out around the garage.

7 He really wanted to get into
8 racing. Mr. Rennick was trying to build his racing
9 team. He was basically a gopher and mechanic. He
10 loved cars and ran errands for Steve. The danger
11 is when you are seated at a table with others that
12 you get splashed with whatever hits one of the
13 others. Jury just says they are a bunch of crooks,
14 we'll just convict them all. So in terms of
15 weakness it was, you know, my concern that given
16 the nature and the amount of cash that jurors could
17 infer that somehow they were the fruit of a
18 criminal enterprise rather than legitimate deposits
19 or legitimately gained proceeds.

20 Q. What were the nature and circumstances
21 of the cash that you just mentioned?

22 A. I think there were two or three cash
23 deposits all of them under \$10,000. I don't
24 remember off the top of my head the exact amount
25 other than what is contained in the indictment.

1 Q. Okay. Is it correct that your client
2 Benjamin did admit that he did possess marijuana
3 with intent to distribute it?

4 A. For purposes of the plea, yes.

5 Q. Did he admit that was true?

6 A. Standing in open court, yes, he did.

7 JUDGE MERZ: Was he under oath at
8 the time?

9 THE WITNESS: He would have been
10 placed under oath which is typical.

11 BY MR. GLASSMAN:

12 Q. Now, let me go back and cover a few
13 points. You were representing Mr. Benjamin at the
14 time?

15 A. Yes.

16 Q. You were not representing Mr. Rennick?

17 A. I was not.

18 Q. There is discussion of the term legal
19 fiction or fictional plea. Did you tell Mr.
20 Rennick prior to the entry of him pleading guilty
21 that he was entering a fictional plea?

22 JUDGE MERZ: Rennick or Benjamin?

23 MR. GLASSMAN: Rennick.

24 THE WITNESS: I don't recall. I
25 know Mr. Rennick was concerned. He had a lot of

1 questions, you know, about what we were doing, why
2 we were doing this, but I don't recall talking
3 about a fictional plea. That doesn't sound like an
4 expression that I use. Legal fiction, definitely.

5 BY MR. GLASSMAN:

6 Q. At some point you discussed the concept
7 of a legal fiction with Mr. Rennick?

8 A. Yes, I did.

9 Q. When was that?

10 A. Definitely when I went to see him
11 probably a good year after the case was over. I
12 would have discussed it with him at that time. In
13 the hall we may have all discussed prior to
14 entering the pleas the concept of the legal
15 fiction.

16 Q. So your recollection is that you
17 discussed the concept of a legal fiction with
18 Rennick approximately a year after the case was
19 over?

20 MR. GREGER: Objection, your
21 Honor.

22 JUDGE MERZ: Grounds?

23 MR. GREGER: He said it may have
24 occurred out in the hallway.

25 JUDGE MERZ: I don't think that

1 Mr. Glassman's question implies exclusively.

2 Overruled.

3 THE WITNESS: My recollection and
4 again we are going back a number of years, I do, I
5 mean I recall going down to the Lexington, I'm
6 thinking it was somewhere in the neighborhood of a
7 year after the actual plea took place, the case was
8 over, my client wasn't involved anymore.

9 BY MR. GLASSMAN:

10 Q. With respect to plea negotiations on
11 the day of the entry of the guilty pleas in this
12 case, you said that the plea agreement that was
13 offered to Mr. Benjamin was not conditional on
14 anyone else's plea, is that your testimony?

15 A. That's my recollection. It was prior
16 to trial. It was, you know, plea as three or we go
17 to trial as three and Mr. Benjamin said I'm going
18 to trial. So at that point, yes, that's correct.

19 Q. You said that you thought that
20 Benjamin's case was the strongest?

21 JUDGE MERZ: From a defense
22 perspective?

23 MR. GLASSMAN: Yes.

24 THE WITNESS: Yes, that's my
25 opinion as his attorney. People may have

1 disagreed. Yeah, I felt, tried enough cases where
2 looking at the facts on that case, I mean was
3 excited by going to trial. We don't get a lot of
4 trials in federal court because evidence usually is
5 so overwhelming you just don't take that chance.

6 BY MR. GLASSMAN:

7 Q. Why did you think that Benjamin's
8 defense case was stronger than say Rennick's or his
9 other co-defendants?

10 A. Total lack of evidence in terms of his
11 involvement other than being close to what was
12 going on, but we had an alternative reason for
13 being where a lot of this stuff was going on.

14 Q. What was going on, what are you
15 referring to?

16 A. Well, he was in the garage where
17 allegedly Kareem Cole stored drugs which is part of
18 the garage owned by Mr. Rennick. Mr. Benjamin went
19 to Arizona as an additional driver to bring the
20 truck back. He was in places where people might
21 infer something but there was no hard evidence.
22 Certainly none of the people that were with him
23 would have been saying, Wayne Benjamin was with us
24 when we picked up drugs, when we delivered drugs.
25 There was none of that there.

1 I mean, he had, Wayne Benjamin had
2 very little to do with Kareem Cole or Eddie Moore
3 so there was not, we were not frightened of their
4 testimony in particular.

5 Q. You are aware there was several hundred
6 pounds, correct me if my characterization is wrong,
7 several hundred pounds of marijuana discovered in a
8 garage that was either owned or operated by Mr.
9 Rennick?

10 A. In a locked portion of the garage, yes.

11 Q. Was there, on the morning of trial, you
12 advised Mr. Benjamin; is that right?

13 A. That's correct.

14 Q. And did you advise the other
15 defendants?

16 A. I did not.

17 Q. Who advised the other defendants?

18 A. Their attorneys.

19 Q. Okay. At any point did the assistant
20 United States attorney enlist you in any sort of
21 plan or plot to make Mr. Rennick plead guilty?

22 A. No, the other two defendants were not
23 part of the consideration of my client's plea.

24 Q. So to your knowledge was there any plan
25 or plot to force Rennick to plead guilty against

1 his will?

2 A. No.

3 Q. In fact, at some point did you separate
4 Benjamin out away from his co-defendant so he would
5 not, in fact, be involved in discussing the matter
6 with them?

7 A. I did.

8 Q. When the pleas were actually entered,
9 did you have any reason to believe that Rennick was
10 pleading guilty in anything other than a voluntary
11 fashion?

12 A. Mr. Rennick was clearly not happy to be
13 pleading to anything. He was fidgeting at the
14 podium. All six of us are standing up there. I
15 was not, to be honest with you, paying attention to
16 Mr. Rennick, but I do know earlier on outside in
17 the hallway prior to trial that Mr. Rennick showed
18 a great amount of concern to both Mr. Elliott and
19 Mr. Benjamin that he felt responsible because they
20 were caught up in all of this.

21 I think he was probably pretty
22 loyal to his friends is how he looked at the
23 situation, but I think he clearly, clearly was
24 agitated, but, again, he was not the focus of my
25 attention at that time.

1 Q. You've done a number of pleas in
2 federal court?

3 A. Yes.

4 Q. About how many?

5 A. I'd say no less than three or four a
6 year. Number of trials as well.

7 Q. Are defendants typically happy pleading
8 guilty and subjecting themselves to a prison
9 sentence?

10 A. Some are happier than others depending
11 on the quality of the plea.

12 Q. And in this case, was there something
13 to indicate that, was there anything to indicate
14 that Rennick, from your perspective, that Rennick's
15 will had been overborne by the prosecutor or anyone
16 else?

17 A. I wasn't involved in his plea so I
18 can't, other than being standing there when it was
19 taking place for our plea discussions, I was not
20 involved in any of that so I don't know.

21 Q. If after entering the guilty plea, if
22 Rennick or Elliott would have withdrawn their plea
23 sometime down the road, was it your understanding
24 that your client Benjamin's plea would be affected
25 at all?

1 A. I'd not been lead to believe that, no.

2 Q. And there is nothing in the plea
3 agreement to indicate that?

4 A. No, this was not a package deal. This
5 was clearly as to Mr. Benjamin. I think Mr.
6 Elliott may have had some different problems but
7 certainly as to Mr. Benjamin, we were done.

8 MR. GLASSMAN: No further
9 questions.

10 JUDGE MERZ: Thank you, sir.
11 Redirect?

12 MR. GREGER: Thank you, your
13 Honor.

14 REDIRECT EXAMINATION.

15 BY MR. GREGER:

16 Q. Mr. Cohen, was there any evidence put
17 before a Grand Jury that your client distributed
18 marijuana?

19 JUDGE MERZ: How does he know?

20 MR. GREGER: Mr. Glassman got into
21 what does the meaning of an indictment show.

22 JUDGE MERZ: How does he know what
23 was put before the Grand Jury? Foundation.

24 BY MR. GREGER:

25 Q. Based upon your investigation of this

1 case, could there have been evidence presented to a
2 Grand Jury upon which an indictment for
3 distributing a pound of marijuana would have
4 occurred?

5 JUDGE MERZ: Distributing by
6 Mr. --

7 MR. GREGER: Benjamin.

8 THE WITNESS: I would have
9 expected to find that in the overt acts but having
10 practiced in both Michigan and Kentucky, their
11 federal district court idea of overt is referring
12 to the language of the federal statute. They don't
13 give us anything. In this district they are very
14 good about laying out overt acts.

15 Again, I'm not present in the
16 Grand Jury so I can't answer that affirmatively as
17 personal knowledge. My belief is had that occurred
18 it would have appeared in the overt acts.

19 BY MR. GREGER:

20 Q. One of the circumstantial evidence that
21 might have connected your client to the conspiracy
22 is the two or three currency transactions that
23 occurred; is that true?

24 A. That was my belief in terms of what my
25 weak spots were in this case.

1 Q. And, Mr. Cohen, you could not and would
2 not have denied that your client made the deposits,
3 would you?

4 A. No.

5 Q. Because, in fact, he had?

6 A. Yeah, he readily admitted that he had.

7 Q. And he denied that those deposits were
8 the result of marijuana transactions, didn't he?

9 A. That's why we were going to trial.

10 Q. Mr. Rennick could not have stopped your
11 client's plea, could he?

12 A. No.

13 Q. So if Mr. Rennick was fidgeting, was
14 nervous, was agitated because he was hearing facts
15 that were fictional that he allegedly did, could
16 that explain his nervousness, fidgetiness,
17 agitation?

18 A. It could.

19 Q. Mr. Rennick couldn't have stood up in
20 open court and said, wait a minute, your Honor,
21 Benjamin can't plead to that because that's not
22 true, could he?

23 A. Well, no, but he certainly could have
24 said that's a lie when it was his turn to speak,
25 when it was his plea.

1 Q. Have you read his 2255 petition?

2 A. I have not.

3 Q. The portion that Mr. Glassman talked
4 about where the marijuana was located was in a
5 locked portion of a warehouse that Mr. Rennick's
6 family owned; is that true?

7 A. That's true.

8 Q. And that locked portion of that
9 warehouse was under lease, was it not?

10 A. It was.

11 Q. Who was it leased to?

12 A. Kareem Cole, essentially the other
13 individuals in the initial indictment.

14 Q. Who, I'll phrase it differently --
15 strike that.

16 Did your investigation show that
17 Mr. Cole and Mr., I think it's Davidson, regardless
18 of the other aliases, had a legitimate reggae
19 concert business?

20 A. Yes, we actually had bills, not,
21 whatever you call them, notices of concerts.

22 Q. Fliers?

23 A. Fliers showing that they were
24 promoters.

25 Q. And did your investigation of this case

1 show that, in fact, Mr. Benjamin and Mr. Rennick
2 actually attended one or more of the reggae
3 concerts put on by Mr. Cole or Mr. Davidson?

4 A. Yes.

5 Q. Was there a joint defense agreement --
6 strike that. What is a joint defense agreement?

7 A. Essentially where defendants don't hurt
8 each other, put on a unified defense.

9 Q. And by a waiver executed in writing,
10 the clients allow the defense counsel to speak
11 freely amongst each other protecting the umbrella
12 of privilege but not necessarily the individual
13 client's confidence; is that true?

14 A. Correct, yes, sir.

15 Q. Was there a joint defense agreement
16 executed in this case?

17 A. I don't specifically recall. I would
18 think not.

19 Q. How then did you know how Mr. Gallagher
20 was going to defend the accusations against Mr.
21 Rennick as Mr. Glassman asked you about?

22 A. How did I know?

23 Q. How did you know the witnesses that
24 were going to be called to defend Mr. Rennick?

25 A. I don't know who's being called to

1 defend Mr. Rennick.

2 Q. Did you know what evidence Mr.
3 Rennick's counsel was going to put on to defend him
4 against the allegations put forth by the
5 government?

6 A. It was the same in mine in terms of
7 investigation. Two of us went out to the sheriff's
8 impound lot at the same time.

9 Q. Did you know they hired a forensic CPA
10 or accountant as part of their defense?

11 A. That they had?

12 Q. That they had.

13 A. I believe, I had no reports. I know
14 there was discussion of doing that. Again, much
15 different defenses were involved in this case.

16 Q. Mr. Cohen, how then are you able to
17 discern that your case was the strongest defense
18 case when you didn't know what the components of
19 the defense cases were for Mr. Rennick and Mr.
20 Elliott?

21 A. Because the government gave me that
22 kind gift of laying out overt acts which didn't
23 contain my client's activities and based on history
24 of handling cases where the fringe runners get
25 drawn in hoping they'll plead and then testify

1 against the primaries. And I just think they made
2 a mistake by indicting Mr. Benjamin on facts that I
3 didn't think they could support. The allegations
4 against Mr. Rennick, to a lesser extent Mr.
5 Elliott, seemed a little more substantial. Again,
6 based on overt acts which presumably come out of
7 the testimony provided to Grand Jury.

8 Q. Assuming that the testimony provided at
9 the Grand Jury was truthful?

10 A. Correct. Which I don't obviously
11 believe. Obviously, that's why I try cases.

12 Q. For the record, who presents the
13 government's cases at their Grand Jury's?

14 A. The government.

15 Q. For the record, are defense counsel
16 permitted to cross-examine the government's
17 witnesses presented at Grand Jury?

18 A. No.

19 Q. For the record does the government have
20 a duty to present exculpatory evidence to a Grand
21 Jury?

22 A. Yes.

23 Q. They do?

24 A. They cannot intentionally hide evidence
25 from an investigating Grand Jury.

1 Q. You indicated to Mr. Glassman's
2 questions that Mr. Rennick had questions and
3 concerns about what was happening and why it was
4 happening. Did I state that or paraphrase that
5 pretty correctly?

6 A. Pretty close.

7 Q. Was that on the morning of trial that
8 Rennick had questions and concerns about what was
9 happening and why it was happening?

10 A. At the time of the plea, yes.

11 Q. Was Mr. Rennick having questions and
12 concerns about what was happening and why it was
13 happening as it related to Mr. Benjamin saying that
14 he had received a pound of marijuana from Mr.
15 Rennick?

16 A. He voiced concern in the hallway why is
17 Wayne pleading to anything because he wasn't
18 involved.

19 MR. GREGER: That's all.

20 MR. GLASSMAN: Nothing further.

21 JUDGE MERZ: May the witness be
22 excused, Mr. Greger?

23 MR. GREGER: Yes, sir.

24 THE WITNESS: Thank you, your
25 Honor.

1 MR. GREGER: Mr. Cohen, thank you
2 very much. Matthew Elliott.

3 WHEREUPON:

4 MATTHEW ELLIOTT,
5 of lawful age, a witness herein, being first duly
6 sworn testified as follows:

7 JUDGE MERZ: State your full name
8 and spell your last name for the record, please.

9 THE WITNESS: Matthew Alton
10 Elliott, E-L-L-I-O-T-T.

11 DIRECT EXAMINATION

12 BY MR. GREGER:

13 Q. Mr. Elliott, do you reside in
14 Cincinnati, Ohio area?

15 A. Yes, sir.

16 Q. Mr. Elliott, were you a co-defendant in
17 the case captioned United States of America versus
18 Steven Rennick, Senior, Wayne Benjamin, and Matthew
19 Elliott?

20 A. Yes, sir.

21 Q. Are you a co-defendant in that case?

22 A. Yes, sir.

23 Q. Tell the Court what you understood you
24 were being charged with in that case.

25 A. Trafficking in marijuana.

1 Q. Did you enter a not guilty plea
2 initially to the charges brought against you?

3 A. Yes, sir.

4 Q. Were you scheduled for trial and was
5 that trial scheduled to begin on August 18, 2003?

6 A. I'm not sure of the date, but yeah, we
7 were scheduled to go to trial.

8 Q. Had the indictment that was originally
9 filed in the action been changed to delete some of
10 the defendants?

11 A. Could you repeat that?

12 Q. Sure. Had the indictment that was
13 originally filed been changed to delete some of the
14 defendants?

15 A. I don't know.

16 Q. Did you receive an initial indictment
17 that had five or six defendants' names on it?

18 A. Yes, sir.

19 Q. And did you then receive another
20 indictment that only had three names on it? Would
21 it help your recollection to look at the
22 indictment?

23 A. I don't know if I received it or my
24 attorney received it. Would my attorney have
25 received it?

1 Q. I'll just show it to you and identify
2 it.

3 JUDGE MERZ: Hand the witness
4 Petitioner Exhibits 3 and 4, please. The original
5 is marked 3 and the second one is marked 4 at the
6 bottom.

7 MR. GREGER: Thank you, your
8 Honor.

9 BY MR. GREGER:

10 Q. 3, are you named a defendant in a
11 multiple defendant case?

12 A. Yes.

13 Q. And is there then a second or a
14 superseding indictment that is Exhibit 4 where only
15 three names appear?

16 A. Yes, sir.

17 Q. And is it your name both in No. 3 and
18 No. 4?

19 A. Yes, sir.

20 Q. Steven Rennick, Junior was a named
21 defendant in the first indictment filed; is that
22 true?

23 A. Yes, sir.

24 Q. Did you know Wayne Benjamin?

25 A. I knew who he was, but personally I

1 didn't really know him.

2 Q. Did you have any interaction with Mr.
3 Benjamin other than he hung around the shop and you
4 knew what his name was?

5 A. No.

6 Q. Tell me, for the record, how did you
7 know Wayne Benjamin?

8 A. I had an old car in Steve's garage that
9 I was working on and Wayne did bodywork and he was
10 going to do some work on my car. That's how I
11 originally met Wayne.

12 Q. What information, if we could stay with
13 No. 3 in front of you, okay?

14 A. Okay.

15 Q. What information did you have that
16 Steve Rennick, Junior had conspired with at least
17 you and others to possess with intent to distribute
18 marijuana?

19 A. I don't understand.

20 Q. What evidence did you have that Steven
21 Rennick, Junior conspired with you and others to
22 possess with intent to distribute marijuana?

23 A. Nothing.

24 Q. What information did you have that
25 Wayne Benjamin conspired with you and others to

1 possess with intent to distribute marijuana?

2 A. None.

3 Q. What information did you have that
4 Steven Rennick, Senior had conspired with you and
5 others to possess with intent to distribute
6 marijuana?

7 A. Could you be a little clearer?

8 JUDGE MERZ: What evidence, what
9 information was known to you, known at some point
10 in time, Mr. Greger?

11 MR. GREGER: But at least the
12 return of the first indictment that is marked as
13 Rennick Exhibit 3 which would have been in 2002.

14 JUDGE MERZ: November 2nd,
15 November 8, 2002 as of that time, November 8, 2002,
16 thereabouts, what information did you have that you
17 had agreed with Mr. Rennick, Senior to traffic in
18 marijuana?

19 THE WITNESS: What information did
20 I have?

21 JUDGE MERZ: Yeah.

22 THE WITNESS: I still don't
23 understand what you are asking me, what did I know
24 about Steve?

25 BY MR. GREGER:

1 Q. What information did you have by early
2 November of 2002 that you and Mr. Rennick, Senior
3 had agreed, confederated, and conspired to
4 distribute marijuana? You and Mr. Rennick, Senior.

5 A. What information did I have?

6 Q. What information that you two formed a
7 conspiracy to distribute marijuana?

8 A. I don't know.

9 Q. Were you represented at trial that was
10 to start on August 18, 2003 by Kenneth Lawson?

11 A. Yes, sir.

12 Q. I do not want to know what you and your
13 attorney talked about, but I do want to know
14 whether you discussed with your attorney the facts
15 that the government possessed and would present at
16 trial proving you conspired with Wayne Benjamin,
17 Steven Rennick, Senior, to possess with intent to
18 distribute marijuana. Not what you discussed,
19 simply, whether you discussed it?

20 JUDGE MERZ: Okay, here's where
21 Mr. Greger is going. You don't have to tell us
22 what you said to Ken Lawson or what Ken Lawson said
23 to you. That's protected by attorney/client
24 privilege. Mr. Greger wants to know and his
25 question asks if you talked with Mr. Lawson about

1 the evidence that was going to be presented to show
2 you, Rennick, Senior, and Benjamin agreed to
3 distribute marijuana.

4 THE WITNESS: Did he show me the
5 evidence against us in this case, is that what the
6 question is?

7 JUDGE MERZ: Yes.

8 THE WITNESS: I don't think he
9 ever showed me anything. I think we probably
10 discussed it.

11 JUDGE MERZ: Okay.

12 BY MR. GREGER:

13 Q. Did you review with your attorney the
14 discovery, scant that it might be, that was
15 provided by the government to prove your guilt of
16 the accusations that they brought?

17 A. Meaning did he suppress the evidence
18 and show it to me, is that what you are asking?

19 JUDGE MERZ: Discovery is a term
20 that relates to the obligation of parties in
21 lawsuits to show the other side what evidence
22 they've got. The question is whether you, whether
23 Mr. Lawson ever showed you what the government, I'm
24 sorry, Mr. Greger I may be screwing it up, whether
25 Mr. Lawson ever showed you what the government had

1 given him in the case to show what their evidence
2 was? Indicating no?

3 THE WITNESS: Not that I recall.

4 BY MR. GREGER:

5 Q. Mr. Elliott, you have spoken to me on
6 two separate occasions, have you not?

7 A. Yes.

8 Q. You are, did you express concern about
9 truthfully testifying here today and what
10 implications might arise, what harm might come to
11 you if you truthfully testified today?

12 A. I don't think that's exactly how I put
13 it. I think --

14 JUDGE MERZ: How did you put it?

15 THE WITNESS: My concern was that
16 if my lawyer had signed or said or done something
17 without my knowledge, that I didn't want to come
18 here and not know that and somebody say, I did this
19 or I signed this or my lawyer said this. I've not
20 been able to get ahold of my attorney which she's
21 not an attorney anymore so that was my concern.

22 JUDGE MERZ: All right.

23 BY MR. GREGER:

24 Q. Mr. Elliott, did you, in fact, seek
25 counsel as it relates to your testimony here today?

1 A. I spoke to an attorney, yes.

2 Q. You talked to Mr. Monday?

3 A. Correct.

4 Q. Mr. Monday called me?

5 A. Correct.

6 Q. Is Mr. Monday here today with you?

7 A. No, he's not.

8 Q. So you had an opportunity to discuss
9 with counsel what might occur at this hearing?

10 A. Yeah, he to the best of his knowledge
11 he told me --

12 Q. Okay. Based upon your discussions with
13 Mr. Lawson and your knowledge of what you yourself
14 -- strike that.

15 Who's in the best position to know
16 what you did as it relates to a drug conspiracy?

17 A. Me.

18 Q. You'd know what you did and didn't do,
19 right?

20 A. Correct.

21 Q. You'd know if the allegations were true
22 or false that the government was making about you,
23 wouldn't you?

24 A. Yes.

25 Q. Did you form an opinion about the

1 strength of the government's case against you as a
2 result of both your personal knowledge about what
3 you actually did and the discovery that was given
4 to you by the government to show what they knew you
5 did?

6 A. Could you repeat it?

7 JUDGE MERZ: Did you form --
8 BY MR. GREGER:

9 Q. How strong of a case did the government
10 have against you on the accusations they made in
11 the two indictments?

12 A. Truthfully I'm not sure. My lawyer
13 never showed me.

14 Q. Based upon your own knowledge --

15 A. Okay.

16 Q. -- regardless of what you talked about
17 with your attorney, how strong of a case did they
18 have against you that you conspired with Rennick
19 and Benjamin to distribute marijuana?

20 A. I pleaded to it.

21 Q. I understood that. We are going to get
22 to that. You were going to go to trial, weren't
23 you?

24 A. No.

25 Q. You were not adamant about going to

1 trial on August 18, 2003?

2 A. Was I adamant? No.

3 Q. Well, when did you start to discuss
4 resolution of your case then by a plea with the
5 government if you weren't adamant about going to
6 trial?

7 A. When did I discuss pleading?

8 Q. When did you say to the government you
9 got me, let's start resolving this case by a plea,
10 I'm not going to try this case. When did you start
11 that process?

12 A. The day, I guess the day they were
13 picking the jury.

14 Q. Were you prepared to go to trial on
15 August 18, 2003?

16 A. Was I prepared? I guess the best that
17 I could be.

18 Q. Did you go to trial on August 18, 2003?

19 A. No, sir.

20 Q. They offered you a plea agreement,
21 didn't they?

22 A. Yes, sir.

23 Q. Did you on the morning of your plea
24 speak in a group with your attorney Ken Lawson,
25 Steven Rennick's attorney William Gallagher, and

1 Robert Brichler from the United States attorney's
2 office?

3 A. Did I speak?

4 Q. Were you in that group of people?

5 A. Yeah, I think so.

6 Q. Tell me what was said in that group of
7 people.

8 A. I guess they was discussing what each
9 one of us was going to plead to.

10 Q. Did you at some point speak privately
11 with Steven Rennick, Senior about plea bargaining?

12 A. Not that I recall.

13 Q. Did you tell Steven Rennick, Senior,
14 that you had young children and that you could not
15 go to prison for a lot of time?

16 A. Not that I recall.

17 Q. Did you ever cry on the morning that
18 you were set to go to trial when you were speaking
19 with Steven Rennick, Senior?

20 A. Not that I recall.

21 Q. Did you, in fact, have young children
22 in 2003?

23 A. Yes.

24 Q. Did you want to spend a lot of time in
25 prison?

1 A. Does anyone? No.

2 Q. Tell me how the plea discussions
3 started.

4 A. I guess it started with our attorneys.

5 Q. Who do you recall starting the plea
6 discussions? How did that process begin?

7 A. I'm not sure how it began.

8 Q. Did you instruct your attorney to go to
9 the United States attorney and find out if you
10 could plead to something to avoid going to trial?

11 A. No.

12 Q. Mr. Elliott, are you afraid that the
13 government will indict you for perjury if you come
14 in here today and tell this Court that, in fact,
15 what you agreed to was fictional?

16 A. Am I worried that the government -- I
17 have concerns.

18 Q. That the government could, in fact,
19 seek an indictment against you if you testify
20 truthfully before this Court that the facts
21 surrounding your plea are not true, that's what
22 your fear is, isn't it?

23 A. I have a whole lot of fears.

24 Q. That's one of them, isn't it?

25 A. That I'm not sure if I sign, that my

1 lawyer had me sign something that now it could come
2 back on me?

3 Q. Right.

4 A. Yeah, I guess.

5 Q. I mean, Mr. Elliott, you told me in our
6 telephone conversations, you've done this time,
7 this is behind you and you don't want to have
8 anything to upset your present life by having the
9 government now take action against you for
10 something that happened in 2003. That's what you
11 expressed to me, didn't you?

12 A. I think it was more that I was scared
13 of what my lawyer had done, not what I had done.

14 Q. Did your lawyer tell you -- strike
15 that. Did the offer from the government that
16 morning as to you change at any time?

17 A. Yes.

18 Q. Okay. What did it start out? What was
19 the first offer that the government made to you to
20 get you to plead?

21 A. Probation.

22 Q. Was that the first or second?

23 A. I think --

24 Q. Let me help you, okay? Were you facing
25 a five-year minimum mandatory if you were

1 convicted?

2 A. Yes.

3 Q. Minimum that you could go to prison is
4 five years up to 40 if you were convicted; is that
5 true?

6 A. Correct.

7 Q. Did the government first offer to give
8 you 36 months if you changed your plea?

9 A. Not that I recall.

10 Q. Did it ultimately result in an offer
11 from the government that you would get probation if
12 you plead?

13 A. Yes.

14 Q. Who told you that you would get
15 probation if you plead?

16 A. My attorney.

17 Q. Was that based upon discussions that
18 you saw him have with Mr. Brichler, the United
19 States attorney?

20 A. I just went by what my attorney told
21 me. It didn't have anything to do with what. Who
22 he talked to. I hired him. I suppose he was to --

23 Q. Represent you? How many times did the
24 offer from the government to you change that
25 morning, just twice?

1 A. When I left, when we pleaded it was for
2 probation.

3 Q. That's what you understood you were
4 going to get as a result of your plea?

5 A. Correct.

6 Q. That's one of the reasons you pled,
7 wasn't it?

8 A. Sure.

9 Q. Were you under oath in front of Judge
10 Dlott when she asked you a series of questions
11 before you accepted your plea?

12 A. Yes.

13 Q. Was one of the questions that she asked
14 you whether or not there had been any promises,
15 representations to you about what the ultimate
16 sentence in your case would be?

17 A. Yes, she did ask me.

18 Q. And did you tell her, yes, Judge, I
19 have an expectation that I'm going to get probation
20 because that's what my attorney told me?

21 A. No.

22 Q. No?

23 A. Huh-uh.

24 Q. Even though you knew at the time she
25 asked you that question that representation had

1 been made to you by your attorney; is that true?

2 A. Yes.

3 Q. It was a means to an end, wasn't it?

4 The plea was simply, regardless of what the
5 government wanted so long as you could get the
6 probation, you were willing to do what the
7 government asked you to do, is that a fair
8 representation? It was just a means to an end?

9 A. What do you mean to an end, to an end
10 of my case, that case was over then?

11 Q. That, one, it was over and, two, it was
12 that you were going to get probation.

13 A. It was a means --

14 JUDGE MERZ: Hang on. Would the
15 reporter read back the question.

16 (WHEREUPON, the requested portion
17 of the record was read.)

18 THE WITNESS: Yeah, and I was
19 accepting responsibility for what I did.

20 BY MR. GREGER:

21 Q. It was your understanding that all
22 three defendants had to plead for you to get the
23 deal that the government offered to you? It was a
24 package deal, everybody pled?

25 A. I don't know if that's what it had to

1 be but that's what it seemed like it was.

2 Q. And did you ever tell Mr. Rennick that
3 I want to go ahead and plead, Wayne Benjamin wants
4 to go ahead and plead, we need you to come along
5 with us, the package deal?

6 A. Not that I recall.

7 Q. Who gave you the impression that to get
8 your deal everybody had to plead?

9 JUDGE MERZ: I don't think he said
10 that, but it assumes facts not in evidence.

11 MR. GREGER: I'm sorry, let me go
12 back then.

13 BY MR. GREGER:

14 Q. Did you get the impression that it had
15 to be everybody pleading so you could get your
16 deal? Is that the impression that you got?

17 A. My impression was if I pleaded then I
18 got probation.

19 Q. Well, did you have to do anything to
20 get a substantial assistance motion filed on your
21 behalf?

22 A. Did I have to do anything other than
23 plea?

24 Q. Yes.

25 A. (Witness shakes head.)

1 JUDGE MERZ: Indicating no.

2 BY MR. GREGER:

3 Q. You didn't have to get Mr. Rennick to
4 plead to get your substantial assistance motion?

5 A. Nobody ever told me that, no.

6 Q. Were you at your sentencing?

7 A. Sure.

8 Q. Do you remember the discussions that
9 occurred in open court between Mr. Lawson and
10 Brichler before whether or not you were going to
11 get substantial assistance?

12 A. Was I in court?

13 Q. Yeah.

14 A. Yeah, I was in court.

15 Q. Did you hear the discussion between Mr.
16 Lawson and Brichler about why you are not getting
17 your substantial assistance motion?

18 A. Huh-uh.

19 Q. You didn't hear that?

20 A. No.

21 Q. Were you always in open court at the
22 time of your sentencing, did you ever leave?

23 A. No.

24 Q. Had you --

25 A. Not that I remember. I don't remember

1 them ever saying anything out loud or to me.

2 Q. Okay. Had you known prior to
3 August 18, 2003 Steven Rennick, Senior, to have
4 distributed marijuana to anyone?

5 A. No.

6 Q. Had you ever seen Wayne Benjamin in
7 possession of any marijuana prior to August 18,
8 2003?

9 A. No.

10 Q. Was the jury that was to hear your case
11 actually present and ready to go the morning the
12 plea discussions occurred?

13 A. That's what my attorney told me.

14 Q. I may have asked this and I apologize,
15 had you prior to August 18, 2003 had any plea
16 discussions with the government in an effort to
17 resolve your case short of trial?

18 A. Did I meet with the government before
19 that day?

20 Q. Or did you authorize your attorney to
21 meet with the government for purposes of
22 determining, Ken, go get a plea, try to resolve
23 this, I don't want to go to trial?

24 A. (Witness shakes head.)

25 Q. No?

1 A. Not that I recall, no.

2 Q. Is that because you weren't guilty of
3 the accusations that the government made against
4 you?

5 A. No.

6 Q. You understood that you were facing a
7 five-year minimum mandatory sentence if you were
8 convicted of the crime charged in the indictment,
9 did you not?

10 A. Did I know it carried five years?

11 Q. A minimum, mandatory?

12 A. No, not really. I didn't know what the
13 minimum was. I knew it carried up to like
14 40 years, I knew that.

15 Q. Did your, were you ever aware prior to
16 Judge Dlott doing the plea colloquy with you if you
17 were convicted, you had to go to prison for a
18 minimum mandatory five years?

19 A. When Judge Dlott did the what?

20 Q. Started to take your plea, started to
21 ask you questions. Everybody was in court, you
22 were all lined up and she went left to right, Mr.
23 Rennick, Mr. Elliott, Mr. Benjamin, do you remember
24 that?

25 A. Was that the last day we went to the

1 court?

2 Q. No, that was the date she took your
3 plea of guilty from you.

4 A. Yeah, Steve went first and then I went.

5 Q. Exactly, right. You were all together,
6 right? She went down the line, Mr. Rennick, you
7 didn't do separate pleas, she did them all
8 together, didn't she?

9 A. I know we were all in the courtroom.
10 This is what I remember. We were in the courtroom.
11 Steve went first and Steve got sentenced, I went
12 second and I got sentenced. Now whatever, and
13 Wayne went after. It wasn't like she said, Steve,
14 then Matt and then Wayne. It was right after each
15 other --

16 Q. I appreciate that. I'm not talking
17 about the sentencing where she imposed your
18 14 months. I'm talking about when you admitted you
19 did something wrong the morning of trial.

20 A. I don't remember.

21 Q. What, if anything, did you understand
22 you could do to get under a five-year minimum
23 mandatory sentence?

24 A. What I could do to get under?

25 Q. Yeah, what could you do to get under

1 the five-year minimum mandatory?

2 A. I don't know.

3 Q. Did you understand that the government
4 could file a motion asking the court to get you
5 under the five-year minimum mandatory if you
6 provided substantial assistance to the government?

7 A. Did I know this?

8 Q. Did you know that?

9 A. No.

10 Q. Did you ever learn that from the date
11 you entered your plea until the date that you were
12 sentenced?

13 A. Not that I recall.

14 Q. Well, then, how could you expect
15 probation if you didn't know how you could get
16 under the five-year minimum mandatory sentence?

17 A. That's what my lawyer told me.

18 JUDGE MERZ: Just for clarity
19 sake, Mr. Greger, I don't think you asked Mr.
20 Elliott what he pled to.

21 BY MR. GREGER:

22 Q. I'm going to get there.

23 JUDGE MERZ: All right, sir.

24 BY MR. GREGER:

25 Q. Mr. Elliott, did you want to go to

1 prison for five years for something that you did
2 not do?

3 A. I don't think anybody wants to go to
4 prison for what they didn't do. Am I saying I
5 didn't do this? No.

6 Q. What was the date that you conspired
7 with Mr. Benjamin and Mr. Rennick to distribute
8 marijuana?

9 A. On what day did I conspire?

10 Q. On what date did you and another, in
11 this case, government says it's Mr. Benjamin and/or
12 Mr. Rennick, what was the date that you agreed with
13 Mr. Rennick or you agreed with Mr. Benjamin or you
14 all three agreed to distribute marijuana, if ever?

15 A. None that I can remember.

16 Q. Did you ever agree with Steven Rennick,
17 Senior, to distribute marijuana?

18 A. Yep.

19 Q. What was the date?

20 A. I have no idea.

21 Q. What was the year?

22 A. It's the same year our case was, was it
23 2002?

24 Q. What season?

25 A. I don't remember.

1 Q. Where did the discussion occur at?

2 Where did the agreement, where was it formed?

3 A. I don't recall.

4 Q. Who was present?

5 A. Probably nobody but us.

6 Q. So Wayne Benjamin wasn't there?

7 A. No.

8 Q. So you never agreed with Mr. Benjamin
9 to distribute marijuana?

10 A. No.

11 Q. Let's talk about the motion for
12 substantial assistance. Have you ever heard that
13 term before, substantial assistance?

14 A. Have I heard it? I've heard it. Do I
15 understand what it means? No.

16 Q. Did you tell me in a telephone
17 conversation that if the government did not give
18 you a reduced sentence at your sentencing hearing
19 that you authorized your attorney to seek to
20 withdraw your guilty plea?

21 A. Yes.

22 Q. Did you understand that the filing of
23 the motion for substantial assistance by the
24 government was the only way to get a sentence of
25 less than five years?

1 A. No.

2 Q. Let me turn to the day of your
3 sentencing. Had the government filed by that date
4 the motion for substantial assistance so that you
5 could get a sentence under five years?

6 A. I don't understand.

7 Q. Had the government, by the time that
8 you showed up for sentencing, filed a motion asking
9 the court to give you credit for the substantial
10 assistance that you provided to the government?

11 A. I have no idea.

12 MR. GREGER: Your Honor, I'm going
13 to ask that you take judicial notice that a motion
14 had not been filed by an inspection of the docket.

15 JUDGE MERZ: Presumably the docket
16 shows that. Mr. Glassman, any objection?

17 MR. GLASSMAN: No.

18 JUDGE MERZ: Judicial notice taken
19 thereof.

20 BY MR. GREGER:

21 Q. What occurred at your sentencing that
22 related to the moving for substantial assistance?

23 A. I don't know.

24 JUDGE MERZ: Record will reflect
25 that the witness has been handed what has been

1 marked as Defendant or Petitioner Exhibit 5.

2 BY MR. GREGER:

3 Q. I'm going to represent to you, Mr.
4 Elliott, that this is a true and accurate
5 transcription of the sentencing hearing in your
6 case. Would you like to take a look through there.
7 Make sure that what I'm representing to you, in
8 fact, is true.

9 You'll see on the top of the
10 second page it says, the next case is United States
11 of America versus Matthew Elliott, defendant five.
12 Will defendant and counsel please step to the
13 podium. Did I read that accurately?

14 A. Yeah.

15 Q. If you would, please, go to page four,
16 lines eight through ten. Do you know what your
17 attorney was talking about, that there were a
18 couple of issues, judge, that came to light this
19 morning that may, with respect to the plea
20 agreement, may be in dispute. Do you know what Mr.
21 Lawson was talking about there?

22 A. This is on the morning that we got
23 sentenced, right?

24 Q. Yes, sir.

25 A. Do I remember this, is that what you

1 are asking me?

2 Q. I'm asking you, do you recall what the
3 couple of issues were, judge, that came to light
4 this morning that may with respect to the plea
5 agreement be in dispute.

6 A. Do I remember? No.

7 Q. Do you know what issues Mr. Lawson was
8 talking about there that came up that morning with
9 respect to your plea agreement? Might it have been
10 the fact that you weren't going to get probation?

11 A. Could have been.

12 Q. Let's look at lines 22 through 25. Are
13 you telling me that Mr. Lawson represented,
14 misrepresented to the court where it states that my
15 client and especially Mr. Gallagher's clients were
16 adamant about going to trial. Are you saying Mr.
17 Lawson misrepresented you in that regard?

18 A. Could have been.

19 Q. He could have misrepresented you?

20 A. I guess.

21 Q. Did he misrepresent you when he said to
22 the court that you were adamant about going to
23 trial?

24 A. I don't ever remember him saying that
25 he was adamant about going to trial.

1 Q. Do you want to go to the next page.

2 Did Mr. Lawson misrepresent to the court that you
3 were closest to Mr. Rennick as between you and Mr.
4 Benjamin?

5 A. He said that in court?

6 Q. It's at the top of page five, bottom of
7 four. In order to end up into these plea bargains
8 it was presented to my client, this is Mr. Lawson
9 speaking, you are his client, since you were
10 closest to Mr. Rennick that if he was able to get
11 Mr. Rennick to enter a plea, voluntarily enter a
12 plea and also provide, and get Mr. Rennick to
13 provide substantial assistance, he would receive,
14 he being Mr. Elliott, would receive a 5K1.1. Do
15 you remember that?

16 JUDGE MERZ: I don't mean to
17 quibble with you, Mr. Greger. It says 5K1, not.1.

18 MR. GREGER: I apologize. 5K1.

19 JUDGE MERZ: I don't know if the
20 difference is material or not. I just wanted to be
21 clear.

22 BY MR. GREGER:

23 Q. Do you remember that?

24 A. Do I remember that? No.

25 Q. Does reading this transcript now help

1 refresh your recollection about what happened on
2 the day that you were sentenced?

3 A. I mean I remember most of what
4 happened.

5 Q. Right. This is true, isn't it?

6 A. I don't remember, I don't remember any
7 of this being said.

8 Q. Don't remember any of that being said.
9 So Mr. Elliott's plea bargain and a 5K1 is based on
10 what Mr. Rennick was to do. Did Mr. Lawson
11 misrepresent the truth of that statement to the
12 court that morning?

13 A. What does that statement mean?

14 Q. That you, as part of your plea
15 agreement, if you got Mr. Rennick to plead, would
16 get a substantial assistance motion filed by the
17 government to reduce your sentence.

18 A. Did my lawyer tell me that?

19 Q. Yeah.

20 A. No.

21 Q. So he misrepresented that to the court
22 in this transcript?

23 A. I'm telling you, he didn't tell me
24 that.

25 Q. Well, was that part of your plea

1 agreement that you'd get a 5K motion filed if you
2 got Mr. Rennick to plead?

3 A. That was never nothing that he
4 discussed with me, no.

5 Q. Did you know that, I don't know if it
6 came from Ken Lawson or not?

7 A. Did I know that?

8 Q. Did you know to get a sentence under
9 five years you needed to get Mr. Rennick to plead?

10 A. No, I didn't know that.

11 Q. Didn't know that, okay. Lines 16
12 through 18, our understanding of, I'm sorry, on
13 page five, our understanding of, his responsibility
14 was to do which was to get into discussions with
15 his friend to enter the plea and to also provide
16 substantial assistance. Do you remember that?

17 A. No.

18 Q. Page six, did you hear Mr. Lawson say
19 that he'd like the opportunity to have a hearing so
20 that, in fact, what the plea was and the terms of
21 that plea would be put on the record? Lines seven
22 through nine.

23 A. I don't remember.

24 Q. Mr. Elliott, this sentencing didn't go
25 smoothly, did it, your sentencing was confusing and

1 confrontational and had multiple problems with it,
2 correct?

3 A. I guess.

4 Q. To the point where you said, if the
5 government doesn't reduce my sentence, you, Lawson,
6 are going to move to withdraw my plea, right?

7 A. Yes.

8 Q. Page eight. Mr. Lawson is asking,
9 lines three through nine, Mr. Lawson is asking for
10 a hearing in the very near future to determine if
11 there was substantial assistance given that you
12 should get credit for. Do you remember that?

13 A. No.

14 Q. Mr. Lawson said, but for your actions,
15 none of this would have went on and he, Mr. Lawson,
16 thought the government knew that. Let me ask you.
17 What efforts did you do but for none of this would
18 have occurred?

19 A. What efforts did I do?

20 Q. What efforts did you make because but
21 for your efforts, none of this would have went on?

22 A. None of what would have went on?

23 Q. That's going to be my next question.
24 First of all I want to know what efforts you did
25 and then I'm going to ask you what it meant that

1 absent those efforts this wouldn't have went on.

2 Know what Mr. Lawson is talking about there?

3 A. No, idea.

4 Q. Would you agree with me that one of the
5 efforts that you made was to get Steve Rennick to
6 plead guilty on the morning of August 18, 2003?

7 A. That I got Steve to plead guilty?

8 Q. That you went to Mr. Rennick, you told
9 him that you had young children, you told him that
10 you didn't want to go to prison for a long time.
11 It was a package deal and Steve without you, I
12 can't get that benefit. Did you tell him that?

13 A. Did I say that? No.

14 Q. Did you use words like that?

15 A. Not that I recall, no.

16 Q. But you don't recall a lot?

17 A. This wasn't about my kids. It was
18 Steve's kid. He didn't want his kid drug in into
19 court. I lost my kid.

20 Q. Let's talk about Mr. Rennick's kid
21 then. Is that Rennick, Junior?

22 A. Yes.

23 Q. Did you understand that Mr. Rennick who
24 had been dismissed from the first indictment was
25 going to be compelled to testify against you and

1 his father?

2 A. Yeah.

3 Q. He was going to be forced to testify,
4 right?

5 A. I don't know about forced but I know
6 his name was his this list.

7 Q. He was on the first list but not on the
8 second list, was he?

9 A. No, his case was dismissed.

10 Q. Because he didn't do anything wrong,
11 right?

12 A. Right.

13 Q. They wrongly indicted Rennick Junior in
14 the first indictment based on what Rennick, Junior
15 did, correct?

16 A. Correct.

17 Q. And did you know that the government
18 had compelled and sought a grant of statutory
19 immunity to force Steven Rennick, Junior, to
20 testify? Did you know that?

21 A. They gave him immunity to testify?

22 Q. Did you know that?

23 A. Huh-uh.

24 Q. Go to page ten lines 8 through 14. Is
25 it a true statement that every defense attorney

1 that was present for trial that morning was ready
2 to go to trial?

3 A. I can't speak for lawyers.

4 Q. Did you have to seek permission to
5 speak with Mr. Rennick, Senior that morning
6 privately? Did you have to go to his attorney or
7 your attorney have to go to his attorney to make
8 sure that you two could talk privately?

9 A. Not that I recall.

10 Q. Government wasn't going to reduce your
11 sentence that morning, were they, Mr. Elliott, that
12 morning be the date of sentencing.

13 A. That's what my attorney told me, no,
14 they wasn't.

15 Q. And you were not happy about that, were
16 you?

17 A. No.

18 Q. And the reason, at least one reason you
19 weren't happy about that because that's what the
20 deal was that you would get a reduced sentence,
21 that's why you plead, right?

22 A. That I would get a reduced sentence is
23 why I plead?

24 Q. Yeah.

25 A. I plead because that was the best deal

1 I could get for what I did.

2 Q. If I understand that and part of the
3 best deal was, is what the sentence would be
4 probation, right?

5 A. That's what my lawyer told me.

6 Q. Okay, page 11. Let's start with the
7 bottom of 10 and top of 11. Mr. Brichler says to
8 the court, I just had a discussion with Mr. Lawson
9 and he related to me that, on the morning of the
10 pleas, that I had a conversation with him, meaning
11 Lawson, concerning your ability to basically make
12 the case go away. Did you have those discussions
13 on the morning of your plea?

14 A. No.

15 Q. Judge says, you mean make the trial go
16 away? And Mr. Brichler says make the trial go
17 away. Mr. Brichler said, if you were cooperative
18 and if you were able to convince the other
19 defendants that this is what they should do, is Mr.
20 Brichler misrepresenting what occurred on the
21 morning of the plea?

22 JUDGE MERZ: Mr. Brichler is not
23 representing what happened on the morning of trial.
24 He's representing what Mr. Lawson told him --

25 MR. GREGER: I apologize.

1 JUDGE MERZ: -- on the morning of
2 sentencing. That happened on the morning of trial.

3 MR. GREGER: I apologize, your
4 Honor. You're absolutely correct. Let me withdraw
5 the question.

6 BY MR. GREGER:

7 Q. On the day that you entered your plea,
8 were you told that you had to cooperate with the
9 government?

10 A. What do you mean cooperate?

11 Q. In any fashion, were you required to
12 cooperate with the government as part of your plea
13 agreement?

14 A. Only thing I was told to do was sign
15 the plea agreement.

16 Q. Did you read it before you signed it?

17 A. No, I didn't.

18 Q. So you didn't even know what the plea
19 agreement called for at the time you scratched your
20 name on it; is that true?

21 A. My lawyer told me to sign it, I signed
22 it.

23 Q. That's not my question. The question
24 is you didn't even know what the terms of the plea
25 agreement was at the time that you signed it?

1 A. I just know what my lawyer told me.

2 Q. And you didn't verify that by reading
3 the plea agreement yourself, right?

4 A. No.

5 Q. As a result of the discussions between
6 Mr. Lawson and Mr. Brichler on the day of your
7 sentencing, the government actually moved the court
8 for a downward departure so that you could get a
9 lesser sentence, true?

10 A. I don't know.

11 Q. Well, if you'd like to look at page 11,
12 lines 14 through 17, do you see where Mr. Brichler
13 says he's prepared at this time based on Mr.
14 Lawson's representation to request the court to
15 consider a downward departure on the basis of your
16 assistance in that case?

17 A. I don't even know what a downward
18 departure is, truthfully.

19 Q. Lesser sentence. Judge, I'm asking you
20 to impose a lesser sentence on Mr. Elliott, me, the
21 government is asking that because of his
22 cooperation and assistance to the government. Does
23 that help you now understand what a downward
24 departure is?

25 A. Uh-huh.

1 Q. Mr. Brichler actually moved for that in
2 front of the court and as a result, you then didn't
3 seek to withdraw your guilty plea, right?

4 A. I didn't withdraw my plea, yes.

5 Q. Right. Because in fact, he moved for
6 the downward departure, asking the court to give
7 you leniency in your sentence so that you got a
8 sentence of 14 months instead of what you were
9 actually looking at, right?

10 A. I guess.

11 Q. Page 12, lines 11 through 14. Did you
12 hear Mr. Brichler tell the court that he wanted to
13 make it clear that the motion for reduction was
14 based upon what happened that day and is not based
15 upon any conduct that Mr. Rennick subsequently
16 engaged in? Did you hear Mr. Brichler say that in
17 open court while you were there for your
18 sentencing?

19 A. I don't know.

20 JUDGE MERZ: Before proceeding to
21 another exhibit, we'll take our lunch and recess.
22 We'll be into recess now. I'll ask the marshall,
23 is an hour and fifteen minutes good time for Mr.
24 Rennick to be fed?

25 MARSHALL: That's fine.

1 JUDGE MERZ: Anybody have a
2 problem with an hour and fifteen minute recess?

3 MR. GREGER: No, your Honor.

4 JUDGE MERZ: We'll be in recess
5 until 1:15.

6 MR. GREGER: Your Honor, do you
7 want to let the witnesses know about a separation
8 of witnesses.

9 JUDGE MERZ: Yes, the witnesses
10 cannot discuss their testimony among each other.

11 (WHEREUPON, a lunch recess was
12 taken.)

13 JUDGE MERZ: Mr. Greger, you may
14 resume your examination.

15 MR. GREGER: Thank you, your
16 Honor.

17 BY MR. GREGER:

18 Q. Mr. Elliott, you've been handed
19 Rennick's Exhibit 6 for the purposes of the 2255
20 hearing. Do you recognize that document for the
21 record?

22 A. Do I recognize it?

23 Q. Yeah, you can take a look at the last
24 page.

25 A. I guess this is what I signed as my

1 plea agreement.

2 Q. Is this the plea agreement that you
3 signed without reading it?

4 A. To the best of my knowledge.

5 Q. Is that your signature on the last
6 page?

7 A. Yes, it is.

8 Q. Did you write in the date, date
9 8/18/03?

10 A. I don't think so.

11 Q. Those aren't your numerals but that is
12 your signature?

13 A. It looks like it, yeah.

14 Q. Okay. Let's go to the first page of
15 Exhibit 6 which you identified as the plea
16 agreement that contains your signature. Paragraph
17 two, originally the plea agreement called for you
18 to chart to, sorry.

19 Initially the plea agreement has a
20 one in the paragraph two, defendant understands the
21 punishment prescribed by law for the offense
22 charged in count one of the indictment is zero to
23 five years in prison. Fine up to 250,000, a
24 three-year term supervised release and special
25 assessment, did I read that correctly?

1 A. Uh-huh.

2 Q. Do you know why the one was changed to
3 a seven?

4 A. No.

5 Q. Are your initials in that section of
6 paragraph two on Rennick's Exhibit 6? Is there
7 an --

8 A. Right where the one was.

9 Q. M-E?

10 A. Yeah.

11 Q. Are those your initials?

12 A. Those are my initial.

13 Q. Why did you initial that change?

14 A. I don't know.

15 Q. Were you initially agreeing to plead to
16 the conspiracy which was count one?

17 A. Was I going to plead to conspiracy?

18 Q. Right, count one. Did you understand,
19 you said the deal changed twice. Was the first
20 deal that you were going to plead to the
21 conspiracy, count one?

22 A. I don't ever know about the first deal.

23 Q. Okay. And so you plead to count seven,
24 do you remember what count seven of that indictment
25 was?

1 A. No, sir.

2 Q. You don't recall as you sit here under
3 oath what you plead to?

4 A. I plead to trafficking in marijuana is
5 what I plead to, I thought. I didn't see this. I
6 was in front of a judge, standing getting
7 sentenced. My lawyer said sign this. I signed it
8 and handed it back.

9 Q. Are you saying that you executed the
10 plea agreement the date of your sentencing and not
11 the date of your plea?

12 A. I signed a paper when I was in court.
13 When it was, I have no idea.

14 Q. Mr. Elliott from start to finish, how
15 much time elapsed between the time plea discussions
16 began and when you actually entered your plea?

17 A. I don't know, maybe an hour.

18 Q. Was there a break taken so that
19 paperwork could be prepared by the government to
20 consummate or complete the pleas?

21 A. I think we did, I think there was a
22 break in there sometime.

23 Q. Did you have, and the defendants all go
24 to lunch. Did you and the other defendants go to
25 lunch during that break?

1 A. I don't think I went to lunch, I think
2 I went outside and smoked.

3 Q. When you then came back in, was the
4 paperwork ready?

5 A. I don't remember.

6 Q. Were you immediately taken to the
7 podium next to your attorney and told to sign the
8 plea agreement that is Rennick's Exhibit 6?

9 A. You mean after Steve was sentenced?

10 Q. No. At the time you entered your pleas?

11 A. Before we were sentenced the first time
12 you are talking about?

13 Q. August 18, 2003, the day you were going
14 to go to trial?

15 A. Okay.

16 Q. You entered into a plea bargain with
17 the government that day, right?

18 A. Right.

19 Q. Deal changed, first it was, one, you
20 don't recall what the first deal was. The second
21 deal was probation?

22 A. Right.

23 Q. Correct?

24 A. Correct.

25 Q. Were you taken immediately upon

1 re-entering the courtroom, taken to a podium and
2 the judge then started to go into the pleas that
3 you were going to enter?

4 A. I don't remember.

5 Q. You were told to sign a piece of paper
6 by your attorney and you didn't read that piece of
7 paper; is that true?

8 A. The paper that I didn't read that I
9 signed was on the final day when we got sentenced.

10 Q. So you did read your plea agreement
11 then if your signature is appended to it because
12 that must be the second thing that you signed.

13 A. I don't recall.

14 Q. Was there a written statement of facts
15 that went along with the plea agreement?

16 A. I don't recall.

17 Q. Did you have to agree to a statement of
18 facts in open court under oath in front of Judge
19 Dlott?

20 A. I don't recall.

21 Q. Did you know what the statement of
22 facts was going to be before Mr. Brichler read them
23 into the record?

24 A. I don't think so.

25 Q. So you did not know what the factual

1 basis for your plea was before you heard it come
2 out Mr. Brichler's mouth, true?

3 A. I didn't know what the plea was going
4 to be, is that what you are asking me?

5 Q. Didn't know what the factual basis for
6 your plea was, what the facts were behind your
7 plea?

8 A. Meaning --

9 Q. That Mr. Brichler --

10 A. -- did I know what I was pleading to?

11 JUDGE MERZ: That's the question.
12 Did you know what facts you were pleading to.

13 THE WITNESS: Yeah.

14 BY MR. GREGER:

15 Q. What facts, not the charge but the
16 facts that you said were true?

17 A. Did my lawyer ever show me evidence or
18 any facts or anything that the prosecutor had
19 against me or anybody else?

20 Q. Yes.

21 JUDGE MERZ: No, no. Hang on a
22 second, Mr. Greger. Before a judge can find you
23 guilty of something there has to be a statement of
24 facts read into the records, what the facts are
25 that underlie the defense, that underlie the guilty

1 plea Mr. Greger is asking. Do you remember either
2 seeing it in writing or hearing Mr. Lawson tell you
3 what it was going to be or anytime before Mr.
4 Brichler read it into the record did you know what
5 the facts were?

6 THE WITNESS: Not that I recall.

7 BY MR. GREGER:

8 Q. Let's go back to the question raised by
9 your comments. Did Mr. Lawson go over with you
10 that the government had the evidence against you
11 that was going to go over your trial?

12 A. No.

13 Q. No?

14 A. No.

15 Q. Were you able then to determine the
16 strength of the government's case against you prior
17 to entering your plea of guilty?

18 A. I went by what my attorney told me.

19 Q. Am I correct that all three of the
20 defendants either stood at a podium or sat at
21 tables and the court went one to the other in
22 accepting the pleas?

23 A. I think so.

24 Q. Did you hear the government read into
25 the record the facts that supported your plea or

1 were behind your plea, the facts to which you were
2 pleading?

3 A. I don't recall.

4 Q. I will represent to you, Mr. Elliott,
5 that this is a true and accurate transcription of
6 the pleas that were taken before Judge Dlott
7 starting at 11:45 a.m. on August 18, 2003. I will
8 ask you if, you would, please, turn to page 31,
9 lines 17 through 24. Later that day on October 15,
10 2002 Mr. Elliott responded to that garage where he
11 and Eddie Moore, another co-defendant in this case,
12 obtained approximately 50 pounds of marijuana,
13 transported that marijuana to be broken down and
14 distributed, some of it distributed almost
15 immediately to customers and the rest of the
16 marijuana was stored at Mr. Moore's residence where
17 it was later seized by the police. Did I read that
18 accurately?

19 A. Yes.

20 Q. Did you go to the College Hill garage
21 on October 15, 2002?

22 A. Yes.

23 Q. Are you sure of the date?

24 A. No.

25 Q. How do you know it was October 15,

1 2002?

2 A. Because this is the same one that was
3 brought out as evidence that the day before Eddie
4 Moore got caught and that's the day that I was
5 there.

6 Q. Who was at the garage on October 15,
7 2002?

8 A. I don't know.

9 Q. Where in the garage did you obtain the
10 50 pounds from?

11 A. I didn't.

12 Q. You didn't?

13 A. Huh-uh.

14 Q. You distributed some of the marijuana
15 that you got on October 15, 2002 almost
16 immediately; is that true?

17 A. Yes.

18 Q. Who were your customers?

19 A. I'll take the Fifth on that.

20 JUDGE MERZ: Can't hear you.

21 THE WITNESS: I'd like to exercise
22 my Fifth Amendment right.

23 JUDGE MERZ: To do what?

24 THE WITNESS: Not to answer. That
25 might incriminate me.

1 JUDGE MERZ: You've already pled
2 guilty to this. You've got a right to maintain
3 your Fifth Amendment and immunity. You don't give
4 that up by pleading guilty. I don't understand how
5 an answer to that question is going to incriminate
6 you. It incriminates other folks.

7 MR. GLASSMAN: At this point, I'll
8 just raise an objection on the basis of relevance.

9 JUDGE MERZ: Sustained.

10 BY MR. GREGER:

11 Q. How did Eddie Moore get the 30 pounds
12 that was seized from his house?

13 A. He picked it up from the garage.

14 Q. Picked it up from the garage?

15 A. Yeah.

16 Q. So was there 80 pounds that was
17 obtained at the garage that day or 50?

18 A. 50.

19 Q. 50. So Mr. Moore was with you?

20 A. He was at the garage, he picked it up,
21 I was there but I didn't pick it up or receive it
22 or anything, I just was there.

23 Q. Who did Mr. Moore get it from?

24 A. I'm not sure.

25 Q. Who did Mr. Moore tell you he got it

1 from?

2 A. I don't think I ever asked.

3 Q. Who did you see at the garage other
4 than you and Mr. Moore?

5 A. There was a bunch of people at the
6 garage.

7 Q. Who?

8 A. Workers, Steve, Phillip.

9 Q. Phillip who?

10 JUDGE MERZ: Phyllis?

11 THE WITNESS: Phillip.

12 BY MR. GREGER:

13 Q. Phillip, one of the co-defendants. Mr.
14 Davidson?

15 A. I guess that's his name.

16 Q. What did you know him by?

17 A. Phillip.

18 Q. When you say we knew him by Phillip,
19 who is the we?

20 A. I didn't know I said we.

21 Q. Mr. Elliott, did Mr. Rennick call you
22 and tell you to come and pick up the marijuana?

23 A. Not that I recall.

24 Q. Did Mr. Elliott, did you do anything
25 else as part of the at-length conspiracy other than

1 obtain 50 pounds of marijuana from a warehouse in
2 College Hill, distribute it to customers and store
3 it at Eddie Moore's house and later where it was
4 seized?

5 A. I don't understand.

6 Q. Did you do anything else as part of the
7 alleged conspiracy other than pick up 50 pounds of
8 marijuana from a warehouse on College Hill,
9 distribute it to some customers, and store the
10 remainder at Eddie Moore's house where the
11 marijuana was later seized?

12 A. Not that I recall.

13 Q. Who was part of this conspiracy?
14 Without looking at the indictment, who did you
15 agree with?

16 A. Agree with for what?

17 Q. Agree with to violate criminal laws.

18 MR. GLASSMAN: Your Honor,
19 actually, I object on the basis of asked and
20 answered before lunch.

21 JUDGE MERZ: Overruled.

22 THE WITNESS: Who did I --

23 BY MR. GREGER:

24 Q. Agree with to violate a criminal law,
25 who did you form a conspiracy with?

1 JUDGE MERZ: With respect to this
2 case?

3 MR. GREGER: Right, with respect
4 to this case only.

5 THE WITNESS: I don't know. Can I
6 ask a question?

7 JUDGE MERZ: Go ahead.

8 THE WITNESS: Was I charged with
9 conspiracy? Is that what I pleaded to was a
10 conspiracy?

11 JUDGE MERZ: You were charged in
12 at least count one of the original indictment with
13 conspiracy.

14 THE WITNESS: I was charged or I
15 was sentenced to a conspiracy?

16 JUDGE MERZ: Your question was,
17 was I charged with conspiracy and the answer is,
18 yes, in the initial indictment and I haven't looked
19 at the subsequent superseding indictment. Yes, you
20 were charged with conspiracy in the superseding
21 indictment as well.

22 THE WITNESS: But did I plead to
23 conspiracy?

24 JUDGE MERZ: I don't know that.

25 BY MR. GREGER:

1 Q. Mr. Elliott, if you would, please, take
2 a look at Rennick Exhibit 4 which I believe is the
3 superseding indictment?

4 A. Okay.

5 Q. Do you have No. 4?

6 A. Uh-huh.

7 Q. Can you look at page nine. What did
8 you understand you were charged with in count five
9 of the superseding indictment?

10 A. I guess this was a later charge that
11 was added, right? I guess it was money laundering,
12 I think that's what it was.

13 Q. Is that what you understood you were
14 charged with?

15 A. I think that's what my lawyer said.

16 Q. Were you guilty of that?

17 A. Yeah.

18 Q. Tell me about that. What did you do?

19 MR. GLASSMAN: Objection.

20 Relevance.

21 JUDGE MERZ: Relevance, Mr.

22 Greger?

23 MR. GREGER: His credibility is
24 clearly in question.

25 JUDGE MERZ: And you are

1 attempting to impeach him by getting him to admit a
2 felon.

3 MR. GREGER: I'm trying to get him
4 to admit whether the underlying facts as alleged in
5 count five are true or not.

6 JUDGE MERZ: Overruled.

7 THE WITNESS: Your Honor, I think
8 I need to seek counsel.

9 MR. GREGER: Isn't it, I'm sorry.
10 I think it's cured by the plea bargain so long as
11 he engages in the plea bargain. The government
12 agrees to the no file charges against him and
13 dismiss the count of the indictment that he didn't
14 plea to.

15 JUDGE MERZ: They have been
16 dismissed with prejudice, have they not?

17 MR. GREGER: I believe they have
18 been.

19 JUDGE MERZ: If your reason for
20 wanting to seek counsel is because you fear you may
21 incriminate yourself by admitting the facts
22 underlying count five, that can't happen because
23 the government has dismissed that charge with
24 prejudice which means it can never be brought up
25 again as part of a plea bargain. Does that satisfy

1 your need to talk to counsel?

2 THE WITNESS: Truthfully, I don't
3 understand much of this. I don't want to say
4 anything that's --

5 JUDGE MERZ: You've talked to a
6 lawyer about this proceeding?

7 THE WITNESS: Right.

8 JUDGE MERZ: Did you retain a
9 lawyer with respect to this proceeding?

10 THE WITNESS: I've talked to a
11 lawyer. He said that he could not be here on this
12 date but if anything came up that I needed, felt
13 that I need to seek counsel ask for an attorney and
14 that he would.

15 JUDGE MERZ: That was gracious of
16 him to suggest to you that you'd be able to stop
17 this trial.

18 THE WITNESS: I'm not trying to
19 stop it, your Honor.

20 JUDGE MERZ: You are the witness,
21 you are on the stand and you are not willing to
22 answer questions without talking to a lawyer.
23 You've essentially brought at least your part of
24 the trial to a halt.

25 MR. GREGER: Your Honor, I'm going

1 to withdraw the question.

2 JUDGE MERZ: All right.

3 BY MR. GREGER:

4 Q. Mr. Elliott, what was your relationship
5 with Mr. Rennick before August 18, 2003?

6 A. I guess we were friends.

7 Q. Close friends?

8 A. Pretty close.

9 Q. How long had you known Mr. Rennick
10 before August 18, 2003?

11 A. I don't know, maybe a year and a half.

12 Q. Did you have any common interests?

13 A. Cars, old cars. I restored them, Steve
14 worked on cars.

15 MR. GREGER: May I have a moment,
16 your Honor?

17 JUDGE MERZ: You may.

18 BY MR. GREGER:

19 Q. Mr. Elliott, have you had any contact
20 with the government since you were listed as a
21 witness for Mr. Rennick?

22 A. Any contact with the government?

23 JUDGE MERZ: Any lawyer on behalf
24 of the United States.

25 BY MR. GREGER:

1 Q. Did you talk to Mr. Glassman or Mr.
2 Brichler?

3 A. He said hi coming down the hall.

4 Q. Just this morning?

5 A. Yeah.

6 Q. That's the only contact you've had?

7 A. Yeah, as far as I know.

8 Q. Mr. Glassman didn't call you to ask you
9 what you might be called upon to testify in court?

10 A. Did he call me, Mr. Glassman?

11 JUDGE MERZ: That's the question.

12 Did Mr. Glassman call you and talk to you about
13 what you might testify to in this case?

14 THE WITNESS: No, I've talked to
15 attorney, other than you and the attorney that I
16 talked to, no.

17 BY MR. GREGER:

18 Q. That's Mr. Monday?

19 A. The one that called you, Mr. Monday.

20 Q. That's the attorney that you are
21 talking to?

22 A. Right. Whether he put a call in or
23 not, I don't know.

24 MR. GREGER: Thank you, Mr.
25 Elliott, I don't have any further questions.

1 JUDGE MERZ: Cross?

2 CROSS EXAMINATION

3 BY MR. GLASSMAN:

4 Q. Just to clear up one point. I've never
5 talked to you before today, have I?

6 A. No.

7 Q. Did you force Steve Rennick to plead
8 guilty?

9 A. No.

10 Q. Did you try to force him to plead
11 guilty?

12 A. No.

13 Q. So far as you are aware whose choice
14 was it for him to plead guilty?

15 A. It was his.

16 Q. You plead guilty to marijuana
17 trafficking?

18 A. Correct.

19 Q. And you were guilty of marijuana
20 trafficking?

21 A. Correct.

22 Q. And Steve Rennick was also involved in
23 marijuana trafficking?

24 A. Correct.

25 MR. GLASSMAN: I have no further

1 questions.

2 JUDGE MERZ: Thank you.

3 MR. GREGER: I don't have anything
4 further, Mr. Elliott.

5 JUDGE MERZ: You may step down,
6 sir.

7 MR. GREGER: Demetrius Ball.

8 WHEREUPON:

9 DEMETRIUS BALL,
10 of lawful age, a witness herein, being first duly
11 sworn testified as follows:

12 JUDGE MERZ: Sir, state your full
13 name and spell it for the record, please.

14 THE WITNESS: Demetrius Ball,
15 D-E-M-E-T-R-I-U-S.

16 MR. GREGER: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. GREGER:

19 Q. Mr. Ball, do you know Steve Rennick,
20 Senior?

21 A. Yes, I do.

22 Q. How long have you known him?

23 A. Approximately little more than
24 20 years.

25 Q. Were you present in the courtroom on

1 August 18, 2003 when Mr. Rennick entered his guilty
2 plea?

3 A. I'm not sure of the date that it was
4 but I was in the courtroom when he entered the
5 guilty plea.

6 Q. Did you hear the judge ask Mr. Rennick
7 questions?

8 A. Yes.

9 Q. Did you ever see Steve Rennick move his
10 head in response to the judge's questions instead
11 of making a verbal response?

12 A. Yes.

13 Q. Tell the court --

14 JUDGE MERZ: I'm not sure, Mr.
15 Greger, that I'm going to allow a lay witness to
16 impeach the record.

17 MR. GREGER: Your Honor, the
18 record is clear and I'll point out exactly where
19 the judge then says, Mr. Rennick, you have to make
20 a verbal response.

21 JUDGE MERZ: Very good, sir.

22 MR. GREGER: I'll get to that. I
23 should have known. I apologize for thinking that
24 you would.

25 BY MR. GREGER:

1 Q. Tell the Court what you saw as the
2 judge was asking questions, what you saw Mr.
3 Rennick do.

4 A. I saw Steve shaking his head no.

5 Q. How many times to questions asked by
6 the judge did you see Steve Rennick shake his head
7 no?

8 A. He shook his head no constantly.

9 Q. Did you then see anything happen
10 between Mr. Rennick, Senior and his attorney while
11 they stood before the judge?

12 A. Yes.

13 Q. What did you see?

14 A. I saw Steve whisper in his ear. I
15 couldn't tell what they were saying and afterwards
16 he pled guilty.

17 Q. Was the speaking or the whispering from
18 the attorney to Steve or from Steve to the
19 attorney?

20 A. From the attorney to Steve.

21 Q. You were not close enough to know what
22 was said?

23 A. No, sir.

24 Q. Did this nudging and whispering or
25 speaking from the attorney to Steve Rennick happen

1 at the podium in the middle of the judge taking Mr.
2 Rennick's plea?

3 A. Yes.

4 Q. After this whispering or speaking and
5 nudging, did Mr. Rennick answer yes to the same
6 questions that he had been shaking his head no to?

7 A. Yes.

8 Q. You indicated in an affidavit that was
9 filed with this Court that you listened to the
10 judge ask Steve several questions during his plea
11 and then it appeared to you that she, too, saw Mr.
12 Rennick's surprise and denials. Let me ask you,
13 what is the basis for you to say that's the
14 impression you got from what you saw?

15 A. Well, Steve and I, we talked all of the
16 time and Steve told me that he wasn't guilty and he
17 was going to plead not guilty. It was surprising
18 to me that he got up there and pled guilty after
19 what I saw go on in the courtroom.

20 Q. What was Mr. Rennick's emotional state
21 after the plea hearing, Mr. Ball?

22 A. He was very, very upset.

23 Q. What happened?

24 A. Well, he come out, as we left the
25 courtroom he was, I mean, he was enraged. He said,

1 why? What do you mean? Why? What do you mean
2 fictional plea? What the hell -- sorry.

3 JUDGE MERZ: Quotation is great.

4 BY MR. GREGER:

5 Q. Exactly what did you hear?

6 A. What the hell is a fictional plea and I
7 asked the same, what happened there, Greg, Bill?
8 And they went off and talked to Steve and Steve, he
9 was in a rampage and I said, calm down, Steve, let
10 them do their job and get out of here.

11 Q. Did you hear Mr. Gallagher in the
12 hallway after the pleas use the term fictional
13 plea?

14 A. After the sentencing?

15 Q. After the plea was taken and Mr.
16 Rennick was enraged, did you hear Mr. Gallagher use
17 the term fictional plea?

18 A. I'm not sure if it was Mr. Gallagher or
19 I'm not sure which one. I heard fictional plea, I
20 heard that for sure.

21 Q. And did you hear it in a group of
22 lawyers as they were responding to Mr. Rennick and
23 the other two defendants?

24 A. Yes.

25 Q. You said you asked what the heck is a

1 fictional plea?

2 A. Yes, sir.

3 Q. Did anybody answer your question?

4 A. No, sir. Then I turned around and
5 asked, also asked Mr., this was after the fact, I
6 asked Mr. Goldberg what was a fictional plea and he
7 said, there is no fictional plea.

8 Q. Is that a term that you made up,
9 fictional plea?

10 A. I had never heard the term.

11 Q. And you heard it from a group of
12 attorneys addressing the defendant Benjamin,
13 Rennick, and Elliott in the hallway after the pleas
14 had been taken by Judge Dlott?

15 A. Yes, sir.

16 Q. Mr. Gallagher tell Steve to calm down?

17 A. Yes.

18 Q. Did Mr. Gallagher tell Steve that he
19 had to go through that plea so that the court could
20 give him acceptance of responsibility?

21 A. It's been a long time. I can't
22 remember all of that, but I remember telling him to
23 calm down, Steve.

24 Q. Did Steve calm down?

25 A. Not really.

1 Q. Did Steve Rennick, in your presence,
2 tell Gallagher that the facts made him sound like a
3 drug dealer and that was not true?

4 A. Yes, I remember that, yes.

5 Q. Did you hear Mr. Gallagher advise Steve
6 about what Steve should say to the probation
7 officer?

8 A. I didn't hear everything. I didn't
9 really hear everything.

10 Q. I understand. What do you recall
11 hearing in that regard?

12 A. I don't recall, I don't remember. I
13 don't remember exactly.

14 Q. Mr. Ball, did you accompany Steve to
15 the courthouse on the morning the trial was
16 supposed to start where all of this commotion
17 ultimately happened?

18 A. I don't remember, the first time Steve
19 went down by himself then I just happen, I went
20 down there myself. He was already down there, and
21 then I went down.

22 Q. Did you ever pick Mr. Rennick up from
23 the VA?

24 A. Yes, sir.

25 Q. Why was Mr. Rennick at the VA in your

1 understanding?

2 A. He was having some problems, some
3 mental problems.

4 Q. Psychological problems?

5 A. Yes.

6 Q. Mr. Ball, I've handed you what is
7 marked for identification as Rennick's Exhibit 8
8 for this hearing and I'll ask you to review that,
9 please.

10 A. (Witness complies with request.)

11 Q. Have you had an opportunity to read
12 Exhibit 8?

13 A. Yes.

14 Q. Is there any portion of the Exhibit 8
15 that is not true?

16 A. I'm not sure fictional plea came out.
17 I know where it came from, it was in the group of
18 lawyers. I didn't actually see or look at Mr.
19 Gallagher and say this is a fictional plea. I
20 heard it with a group of attorneys standing there.

21 Q. Was Mr. Gallagher part of that group of
22 attorneys?

23 A. He was standing there with them, yes,
24 sir.

25 Q. Do you, except for that change,

1 reaffirm the testimony that you've given by
2 affidavit in Rennick's Exhibit 8? Do you reaffirm
3 the truthfulness of that affidavit?

4 A. Yes.

5 MR. GREGER: I have nothing
6 further of the witness. To clarify the record on
7 the point of contention that the Court had on page
8 22 of Plaintiff's Exhibit 7 at line 21, 22, and 23
9 the Court says, Mr. Rennick, we need something
10 verbal. The court reporter has to take it down.

11 JUDGE MERZ: Right. I have that
12 but that's the point at which Mr. Ball says Mr.
13 Rennick is shaking his head no; is that correct?

14 MR. GREGER: There are multiple
15 places where Mr. Ball says that Mr. Rennick was
16 shaking his head no. He was then whispered and/or
17 nudged to by the attorney and proceeded to answer
18 all of the judge's questions yes.

19 JUDGE MERZ: That's not reflected
20 at lines 19 through 23 of Exhibit 7. Lines 19
21 through 23 of Exhibit 7, the other two defendants,
22 Mr. Elliott and Mr. Benjamin, answer no, ma'am.
23 Mr. Rennick, the Judge Dlott says, Mr. Rennick, we
24 need something verbal. The court reporter has to
25 take it down and the witness says no, ma'am which

1 is consistent with shaking his head no.

2 MR. GREGER: Understanding that.

3 JUDGE MERZ: Why else?

4 MR. GREGER: That's the only place
5 for the record. As we know records are taken down
6 where she asks for a verbal response. That does
7 not mean that Mr. Rennick was not, in fact, shaking
8 his head at the podium. That simply would never
9 have been taken down by the court reporter.

10 JUDGE MERZ: Understood.

11 MR. GREGER: I have nothing
12 further of Mr. Ball.

13 JUDGE MERZ: Cross?

14 CROSS EXAMINATION

15 BY MR. GLASSMAN:

16 Q. Mr. Ball, you've known Mr. Rennick for
17 a long time?

18 A. Yes, sir.

19 Q. About how long?

20 A. 20 plus.

21 Q. And you ever had any sort of financial
22 or business relationship with him?

23 A. Yes, sir.

24 Q. What was that?

25 A. We were in trucking together.

1 Q. Did he work for you or did you work for
2 him?

3 A. We worked together.

4 Q. Did you ever have occasion to take a
5 loan from him or anything like that?

6 A. Yes.

7 Q. You said in the affidavit that there
8 were certain factual matters -- actually, let me
9 get it.

10 MR. GLASSMAN: With the Court's
11 indulgence.

12 JUDGE MERZ: Of course, sir.

13 BY MR. GLASSMAN:

14 Q. You said in the affidavit I was shocked
15 to hear the prosecutor state that Steve Rennick,
16 Senior sold marijuana to Matt and gave marijuana to
17 Benjamin. Both matters I'm sure did not occur.

18 A. Both matters what?

19 Q. You said both matters I was sure did
20 not occur. You are positive that never happened?

21 A. I'm not sure if that happened or not.
22 I wouldn't, I've never known Steve to sell
23 marijuana. I know Steve. I've never known him to
24 sell marijuana.

25 MR. GLASSMAN: No further

1 questions.

2 THE WITNESS: To anyone.

3 JUDGE MERZ: Any redirect, Mr.

4 Greger?

5 MR. GREGER: No, your Honor.

6 JUDGE MERZ: Mr. Ball, thank you

7 for your time. You are excused, sir.

8 MR. GREGER: Steven Rennick,

9 Senior, your Honor.

10 WHEREUPON:

11 STEVEN RENNICK, SR.

12 of lawful age, the Petitioner herein, being first

13 duly sworn testified as follows:

14 JUDGE MERZ: Please state your

15 full name for the record.

16 THE WITNESS: Steven M. Rennick.

17 DIRECT EXAMINATION

18 BY MR. GREGER:

19 Q. Mr. Rennick, are you currently in the
20 federal medical center at Lexington, Kentucky?

21 A. Yes.

22 Q. Except for the Butler County Jail for
23 the purposes of this hearing, true?

24 A. Yes.

25 Q. Are you serving a 63-month sentence?

1 A. Yes.

2 Q. Was that the sentence imposed by Dlott
3 in the criminal case?

4 A. Yes.

5 Q. Did Mr. Gallagher represent you in that
6 case?

7 A. Yes.

8 Q. Did you pay Mr. Gallagher?

9 A. Yes.

10 Q. Did you pay him in check and in cash?

11 A. Both.

12 Q. How much approximately did you pay Mr.
13 Gallagher in total?

14 A. Probably about a hundred thousand
15 dollars.

16 Q. Did you ever pay Mr. Gallagher cash in
17 a sum exceeding \$10,000?

18 A. Yes.

19 Q. Did Mr. Gallagher request that you pay
20 him in cash?

21 A. Yes.

22 Q. What did he say?

23 A. He said he was going on a skiing trip
24 with his family and they needed \$25,000 cash.

25 Q. And did you pay him \$25,000 cash?

1 A. Yes.

2 Q. Did you pay him extra because you were
3 going to go to trial?

4 A. Yes.

5 Q. How much?

6 A. 10,000.

7 Q. Did you ever get a receipt from Mr.
8 Gallagher for the cash payments?

9 A. No.

10 Q. Did you ever get a receipt from Mr.
11 Gallagher for the payments you made by check?

12 A. No.

13 Q. Did you get the canceled or returned
14 check as a receipt?

15 A. Yes.

16 Q. Did you understand that a portion of
17 your payments were to pay for investigators that
18 were being used by Mr. Gallagher?

19 A. Yes.

20 Q. Did Mr. Gallagher ever report to you
21 what the investigators had found as it related to
22 your criminal case?

23 A. Yes.

24 Q. What did he tell you?

25 A. He told me, I think, he had taken tape

1 recorded statements from the witnesses up in the
2 shop. There was no involvement in drugs
3 whatsoever.

4 Q. How many witnesses did the
5 investigators tape record?

6 A. I'd say ten.

7 Q. Let me take you back to August of 2003
8 when you were set to go to trial. Are you with me?

9 A. Yes, sir.

10 Q. Was your case set to proceed to a trial
11 on August 18, 2003?

12 A. Yes, sir.

13 Q. Had you and Mr. Gallagher discussed
14 resolving your case by a plea prior to the morning
15 of trial?

16 A. No, no, sir.

17 Q. Were you prepared to go to trial on
18 that day?

19 A. Yes, sir.

20 Q. Was a jury actually present to be
21 selected to hear your case?

22 A. Yes.

23 Q. To the best of your knowledge was Mr.
24 Gallagher likewise prepared to start trial on
25 August 18, 2003?

1 A. Yes.

2 Q. Why had you not discussed with Mr.
3 Gallagher resolving your case by way of plea prior
4 to the day of trial?

5 A. Because with the detective that worked
6 on it with Mr. Gallagher talking to all of the
7 witnesses, I was not guilty.

8 Q. Had you prior to the morning of trial
9 been shown any plea agreement?

10 A. No.

11 Q. Had you prior to the morning of the
12 trial been shown any statement of facts that would
13 support a plea of guilty to one or more charges?

14 A. No.

15 Q. Had anyone discussed with you the
16 federal sentencing guidelines prior to the day of
17 trial?

18 A. No.

19 Q. Had anyone discussed with you what the
20 meaning of a mandatory minimum sentence meant?

21 A. No.

22 Q. Had anyone discussed with you how you
23 might be able to get a sentence of something other
24 than a minimum mandatory five years?

25 A. Yes.

1 Q. Who?

2 A. Mr. Gallagher.

3 Q. When?

4 A. After the plea bargain went. We were
5 out in the hallway and I was yelling and screaming.

6 Q. Okay, let's stop.

7 A. I'm sorry.

8 Q. After the pleas?

9 A. Yes.

10 Q. Is that the first time that anyone ever
11 spoke to you about how you could get a sentence
12 other than the minimum mandatory five years?

13 A. Yes.

14 Q. Tell this judge what happened on the
15 morning of your trial.

16 A. Well, Duke and Tony picked me up at VA
17 hospital and we went up to the courthouse.

18 Q. Let me stop you. Who is Duke?

19 A. Duke is Demetrius Ball.

20 Q. Is that the man that just testified
21 here?

22 A. Yes.

23 Q. You know him and call him Duke?

24 A. Yes.

25 Q. Go ahead.

1 A. And we went up to the courthouse to
2 pick out the jury and we got up there and Mr.
3 Gallagher told me that Mr. Brichler had told him
4 that he had two people that I was going to pay to
5 lie and he said one of them was Duke Ball.

6 So Duke went up and talked to Mr.
7 Brichler and Mr. Brichler showed him two checks for
8 \$6,000 each written on the same day from Earth
9 Management Trucking. So Duke had explained to Mr.
10 Brichler those were for a job that they done and
11 those were nothing to do with paying somebody to
12 lie and we never, he never did say who the second
13 person was. So then we got, Matt asked me to go
14 out in the hallway.

15 JUDGE MERZ: Matt?

16 THE WITNESS: Matt Elliott, I'm
17 sorry. And he started to cry and tell me if we
18 don't, if we get found guilty that he could do up
19 to 40 years and he'd lose his kids and not be able
20 to see them; and I told him, Wayne came out at the
21 same time and I said, you guys go ahead and plead
22 and I'll just go to court by myself and Matt said,
23 they wouldn't do that. It had to be all or none.
24 So I said, I can't plead so then they come back and
25 we met again out in the hall and he said the

1 prosecutor promised him probation, Wayne probation,
2 that I would get 36 months if we pleaded. I mean
3 he was pushing me so hard.

4 JUDGE MERZ: Who is this, Elliott?

5 THE WITNESS: Matt Elliott. He
6 was crying and just pressuring me so I finally said
7 yes. So the lawyers came out and they said, go get
8 lunch and come back in an hour. We came back in an
9 hour and everybody was already at the podium. The
10 judge was there and everybody was ready to do
11 whatever and Gallagher had something in front of me
12 and said, sign this, and I said, what is it? It's
13 a plea. I'd like to read it. Don't worry, it's
14 just what we talked about.

15 So then it went on and when he
16 started reading, when Mr. Brichler started reading
17 the papers it was just not true. So I kept shaking
18 my head no and Bill finally came over and
19 whispered, don't worry, it's a fictional plea. I
20 didn't understand what a fictional plea was, but I
21 figured he was my lawyer, I paid him and he had my
22 best interest at hand. So we went ahead and went
23 through everything and I lied to Judge Dlott and
24 I'm sorry I did that but so after all of that was
25 done we went out in the hallway and I lost it with

1 Bill.

2 I told him, even what he read
3 about Matt and Wayne, it was not true. There was
4 no, and I told him, Bill, it makes me sound like a
5 drug dealer and he said, don't worry about it, it's
6 just a fictional plea, it doesn't mean anything.
7 To hell if it don't. I don't think I'm a drug
8 dealer. We talked and I got calmed down.

9 We need to go down and talk to the
10 probation officer, but he said before we do, Mr.
11 Brichler wants to know if you would work with John
12 Mercado and see if you can get anybody, be a CI and
13 you would get a sentence reduction. Well, I'm
14 thinking I've got 36 months. I knew the judge, I
15 did hear her say something about a mandatory
16 minimum. I'm thinking it was a fictional plea.
17 I've already been told I'm getting 36 months.

18 JUDGE MERZ: Who told you that,
19 Gallagher?

20 THE WITNESS: Gallagher and Mr.
21 Lawson. They came out in the hall and said the
22 plea agreement would be done in an hour and, you
23 know, Matt and Wayne would get probation and I'd
24 get 36 months. Well, when Mr. Gallagher started on
25 the CI thing, Mr. Goldberg said, Steve, you

1 couldn't get involved in that, you can get hurt.

2 Mercado is a guy you couldn't trust anyway.

3 So I love my family. I wanted to
4 be with them. I'm going to be, I didn't know any
5 drug dealers. I didn't know what I was going to
6 do. So I said, yeah, I'll try, see what I can do
7 for you. I didn't know anybody. What I told John
8 Mercado, I could take him to Arizona where I drop
9 off the Jamaicans. That's all I knew. It just
10 went on and on and I got the thing set, but the day
11 I was going to talk, the very next day John
12 Mercado, I was downtown with a driver in the
13 courtroom on a driving ticket and John was there.

14 He gave me a card to call him and
15 come over to his office and talk to him about doing
16 the thing to Arizona.

17 BY MR. GREGER:

18 Q. Tell the Court who John Mercado is.

19 A. He's a Reno, RENU agent that was
20 involved on this case.

21 Q. R-E-N-U, regional enforcement narcotic
22 unit?

23 A. It was a Cincinnati drug task force.

24 JUDGE MERZ: Okay.

25 THE WITNESS: So he met me down

1 there and told me to call, I went home immediately
2 and I called Mr. Gallagher. I said Bill, John
3 Mercado wants to come down and talk on the CI. I
4 begged him, I need you to go with me. I want to
5 know what he says is going to be, he's going to
6 stand by it. He said, don't worry, go down and
7 talk to him. Whatever he says you'll get it. I
8 made an appointment to go down and see John and I
9 took Tony Battles with me.

10 JUDGE MERZ: Same Tony that picked
11 you up on the morning of trial?

12 THE WITNESS: Yes, sir. I took
13 him with me. John Mercado gives me, he
14 fingerprints me, gives us a tape recorder to tape
15 record phone calls and has me sign these papers
16 saying I was a CI, that I couldn't write tickets,
17 that I could get tickets still and when I signed
18 it, I said John can I have a copy of that?

19 No, you have to get a judge to get
20 you a copy of that. This is sounding crazy. John
21 sat there and told us, he knew we didn't pick up
22 drugs. He knew I didn't sell any drugs and he
23 said, if I get a deal for over 1,500 pounds that I
24 would get probation so, you know, we were arranging
25 to go to Arizona and Tony Battles had a guy he met,

1 a Jamaican in jail, Sose Anderson. He could get
2 1,500 pounds if he went to Arizona to pick it up.

3 Mercado got his mug sheet,
4 Anderson. Showed it to him and it was a done deal.
5 We were going to Arizona. Tony Battles was working
6 with this guy. So he gets this deal all lined up.
7 Anderson needed us to get the money. As soon as we
8 called John and told him it was set, his boss says
9 we can't go to Arizona, it's too dangerous. He
10 said we could get rolled.

11 I said, wait a minute, John, I
12 didn't think it was just me and you. I thought we
13 had the whole Army with us, FBI, everything. He
14 said, no, his boss said we can't do that. We can't
15 get the money together. I said wholly molley. I
16 have this guy thinking I'm going to Arizona to pick
17 up drugs. So we went, it went on and on. Calling
18 me saying we are ready. We don't have the money.
19 Finally, I just didn't talk to him no more. I
20 didn't answer the phone.

21 Well, it went on for a couple of
22 months and I was trying to work with another Duke
23 who had a guy that he knew that I was trying to buy
24 500 pounds of marijuana from. So I got the deal
25 set up and John Mercado, I said John where are we

1 going to do this deal at? Do it at your son's
2 garage. That is not a real good idea.

3 He said, it's inside, you know, so
4 I said okay. Kevin Kue which is John Mercado's
5 boss said it wasn't a good idea. We had the guy
6 come in. He called and said he was on his way. The
7 RENU cops set up the shop. They put up a camera
8 and wired me. They were standing out back smoking
9 and laughing. The guy came around the drive
10 through and seen the cops.

11 He went up and called me and said,
12 he said, you are a cop. I'm not coming in there.
13 So it just, every time I tried to do something it
14 got shot down. Then the guy who was going to get
15 the 1,500 pounds in Arizona called me and said that
16 the marijuana was in Cincinnati. Now I've got a
17 problem. He wants to see the money. It was like a
18 million two or whatever.

19 I call John and told him the guy
20 called me. He wants to see the money. He said,
21 well, make an appointment so he could call like on
22 a Sunday and John will be a middleman. He'll tell
23 them we don't have the money right now, blah, blah,
24 blah. Sunday, this Sose Anderson called me and
25 said, do you have the money. I said, wait a

1 minute. You have to call, talk to the guy who has
2 the money. I call John's phone. He said ask for
3 Joe Wilson. He didn't want the guy to know John.
4 Lady answers, I ask for Joe Wilson.

5 She says, there is no Joe Wilson.
6 I had it on speed dial and I called it again. The
7 guy said, are you jacking me around? I dialed
8 again on speed dial. This is John, leave a
9 message. So the guy got pissed off and said,
10 Rennick, you are dead. I said, wait a minute,
11 I'll, he didn't. He said, he's had a beat on me
12 for two days.

13 He started calling us Friday night
14 and it was Sunday. I kept jerking him around
15 because there was no money, and John Mercado wanted
16 to tell him to wait to Monday to get the money out
17 of the bank. He wanted me to talk him into giving
18 us half and pay for half. Bottom line John said it
19 was the weekend and not enough officers to do a
20 drug bust like that. You know, the guy just never
21 called back.

22 The following Friday someone was
23 in my garage and shot me twice and tried to kill me
24 and said, Rennick, you are dead. It was the same
25 voice as the telephone. So I didn't get probation,

1 I got almost killed and even after I got shot there
2 were several phone calls saying it was not
3 finished. They would finish the job up so that's
4 probably my luck. I'll do my 63 months and come
5 out and get killed anyway.

6 It was just a bad deal and like I
7 said, I called Mr. Gallagher during this whole
8 thing and explained what John Mercado told me I
9 could get probation. He said no problem. John is
10 a Cincinnati cop. Can he give me that kind of a
11 deal. He said he's working with Mr. Brichler,
12 whatever he says will go and I tape recorded all of
13 that because, you know, John Mercado gave us the
14 tape recorder.

15 I'll put it to good use. I tape
16 recorded Bill Gallagher. He'll do what he says.
17 You can get probation he said. So it was just a
18 stupid big deal. 1,500 pounds, you know, almost it
19 was unbelievable but the guy knew Tony Battles,
20 Sose Anderson and that's who basically dealt with
21 it. I rambled on, I know.

22 BY MR. GREGER:

23 Q. Mr. Rennick, did anyone explain to you
24 whether the sentencing guidelines called for a
25 sentence close to the 36 months that had been

1 discussed with you on the day of your pleas?

2 A. No.

3 Q. Did anyone explain to you how you could
4 get a sentence of 36 months when the indictment
5 contained a five-year minimum mandatory?

6 A. No.

7 Q. Were you able to explain to Matt that
8 it was impossible for any of them to get a sentence
9 below the five-year minimum mandatory if they plead
10 to the conspiracy count?

11 A. No.

12 Q. How many times did Matt Elliott come
13 back to you with changes in the deal?

14 A. Two, he come two times.

15 Q. Do you recall what the first deal was?

16 A. First deal the way I understand Wayne
17 was going to get 36 months, Matt was going to get,
18 I think, 30 some months and I was going to get 48
19 or something like that. And I just told them, I
20 can't plead to something that is not true.

21 Q. How long did you have to review the
22 plea agreement in this case?

23 A. I never seen a plea agreement.

24 Q. Did you review the plea agreement
25 before you signed it?

1 A. No, sir.

2 Q. Why not?

3 A. They were at the podium and said sign
4 it, it's what we said and Matt was very adamant.
5 He wanted to read his bad and Kenny Lawson said,
6 don't worry, it's just what we said.

7 Q. Were you placed under oath at the time
8 that the court took your plea?

9 A. Yes, sir.

10 Q. Did you tell the court that, did the
11 court tell you that you could be prosecuted for
12 perjury or false swearing if the answers to the
13 court's questions proved to be false?

14 A. Yes, sir.

15 Q. Do you understand now that by
16 testifying under oath before this Court that you
17 lied to Judge Dlott and could subject you to
18 perjury or false swearing charges because you are,
19 in fact, telling this Court that you lied to Judge
20 Dlott at the time she accepted your plea?

21 A. Yes, I've tried to explain to Judge
22 Dlott two times, three times in my resentencing
23 that I lied to you and sorry. I wrote her an eight
24 page letter before getting sentenced telling her
25 that I was guilty and I was sorry that I lied and I

1 was told to do the letter by Todd Ellis, my
2 probation officer, at that time and he did, I asked
3 him, how would I get it to Judge Dlott? I wasn't
4 talking to Mr. Gallagher at this time. You get the
5 letter written and I'll get it to her so he did.

6 Q. Did I explain to you prior to the
7 evidentiary hearing that you risked being charged
8 with perjury or false swearing if you testified
9 here under oath?

10 A. Yes.

11 Q. That you had lied to Judge Dlott?

12 A. Yes.

13 Q. Did you persist in going forward with
14 this motion?

15 A. Yes.

16 Q. Are you on any medications presently
17 that affect your ability to understand what's
18 occurring this afternoon?

19 A. No.

20 Q. Let me take you back to the morning of
21 your trial. Was there a statement of facts that
22 was either read into the record or that you agreed
23 to that was attached to the plea agreement?

24 A. It was read to the court.

25 Q. Was that statement of facts true?

1 A. No.

2 Q. What did you do as the court asked you
3 whether the statement of facts was true?

4 A. As Judge Dlott was asking me I was
5 shaking my head no and I didn't want to lie to her
6 but so I just, I was going to say no and Bill
7 Gallagher leaned over and said you have to say yes,
8 it's a fictional plea. That's the first time I've
9 heard fictional plea, so I said yes.

10 Q. Did you then persist in answering the
11 judge's questions consistent with your accepting
12 your plea?

13 A. No, I didn't, it was always a head
14 shake.

15 Q. Was Mr. Gallagher at your side during
16 the plea process?

17 A. Yes, sir.

18 Q. Did Mr. Gallagher tell you just to
19 answer the judge's questions yes so the deal could
20 go through?

21 A. Yes, sir.

22 Q. Did he use at the podium the term
23 fictional plea?

24 A. Yes, sir.

25 Q. Did he use the term fictional plea out

1 in the hall afterwards where Mr. Ball was?

2 A. Yes, sir.

3 Q. Was your plea taken individually or
4 were your co-defendants Elliott and Benjamin also
5 standing at the podium for the taking of their
6 pleas?

7 A. We were all at the podium together.

8 Q. Were you present when the statement of
9 facts were read for Mr. Elliott?

10 A. Yes.

11 Q. Was the statement of facts that Elliott
12 pled to true?

13 A. No.

14 Q. Mr. Rennick, if the implication was
15 that the 50 pounds that Matt Elliott received from
16 the warehouse in College Hill was part of the
17 500 pounds that you allegedly brought back from
18 Arizona, would the statement of facts that Matt
19 Elliott pled to be correct?

20 A. No.

21 Q. Why not?

22 A. I never brought any marijuana back from
23 anywhere, never had any.

24 Q. Were you able to physically look at
25 both Mr. Elliott and Mr. Benjamin when the

1 statements of facts were read for Mr. Elliott and
2 Mr. Benjamin?

3 A. Yes.

4 Q. What was Mr. Elliott's reaction to the
5 reading of his statement of facts?

6 A. He shook his head, no, like he said it
7 wasn't true to me.

8 MR. GLASSMAN: Objection, your
9 Honor. Only --

10 JUDGE MERZ: Hearsay, sustained.

11 BY MR. GREGER:

12 Q. What did you see Mr. Elliott do, not
13 what did Mr. Elliott say.

14 A. He looked at me and went, shook his
15 head. (Indicating.)

16 Q. Did you continue with the plea?

17 A. Yes.

18 Q. Why?

19 A. Because the lawyer said it was a
20 fictional plea.

21 Q. After the plea process was complete did
22 you have conversations with your lawyer?

23 A. Yes.

24 Q. Tell the court about that conversation.

25 A. When we got out in the hallway, I told

1 Mr. Gallagher what they were reading was not true
2 and it made me sound like a drug dealer, and he
3 explained to us, he said, do not worry, it's just a
4 fictional plea. It doesn't matter at all. So I
5 said okay. Then we were supposed to go down to the
6 probation officer and he said when we get down to
7 the probation officer, don't tell him it was a
8 fictional plea. If you do, he won't accept your
9 plea.

10 Q. Did you get acceptance of
11 responsibility points for continuing the lie in
12 front of the probation officer?

13 A. I don't think I did.

14 Q. Do you know, do you recall?

15 A. I don't know.

16 MR. GREGER: Your Honor, I'll
17 proffer into the record the pre-sentence
18 investigation report, in fact, gives Mr. Rennick
19 three points for acceptance of responsibility, two
20 being, one point being for timely notification of
21 the plea, two being for acceptance of
22 responsibility. I also want the court to take
23 judicial notice of the application of 3E1.1 in that
24 rarely, if ever, is timely notification of a plea
25 applicable when the jury is ready to be seated and

1 hear the case.

2 JUDGE MERZ: Is there a sentencing
3 commission?

4 MR. GREGER: Commentary note and
5 application notes to the back of 3E1.1 where it
6 gives examples. It says you can get acceptance of
7 responsibility even if you go to trial so long as
8 you are protecting constitutional rights.

9 JUDGE MERZ: Any objection to the
10 judicial notice request?

11 MR. GLASSMAN: Only that this
12 seems like legal argument and we can all look at
13 the guidelines.

14 JUDGE MERZ: I'll take judicial
15 notice as requested.

16 MR. GREGER: Thank you, your
17 Honor.

18 BY MR. GREGER:

19 Q. Mr. Rennick, was your son originally
20 indicted in the same drug conspiracy?

21 A. Yes, sir.

22 Q. What occurred to your son's case?

23 A. They dropped it there after a month or
24 so.

25 Q. Was Kareem Cole likewise indicted in

1 your original case?

2 A. Yes.

3 Q. Do you know if Kareem Cole pled?

4 A. I heard he did plead.

5 Q. David Jones, he was likewise indicted
6 in your original case?

7 A. I didn't know anybody named David Jones
8 but knew him as Phillip Davidson.

9 Q. Did you know if Mr. Davidson aka Mr.
10 Jones pled?

11 A. Yes.

12 Q. Was there a superseding indictment
13 filed in your case?

14 A. Yes.

15 Q. Mr. Cole was not mentioned, Mr. Jones
16 was not mentioned, your son was out, Moore was out
17 but Wayne Benjamin was added into the new
18 indictment; is that true?

19 A. Yes.

20 Q. Was your son supposed to testify at
21 your trial?

22 A. Yes.

23 Q. Did he refuse to do so?

24 A. Yes.

25 Q. Did you have an understanding of why

1 your son refused to testify?

2 A. Because they wanted him to lie about
3 what he was going to say.

4 Q. What occurred with your son?

5 A. I think on the day of the jury, they
6 were picking the jury, Mr. Goldberg came down and
7 they made some kind of a deal for him to testify
8 but he wasn't going to testify to what they wanted.

9 MR. GLASSMAN: Objection, your
10 Honor.

11 JUDGE MERZ: Sustained.

12 MR. GREGER: I'll ask the Court to
13 take judicial notice. Judicial immunity sought
14 pursuant to the statute and, in fact, on the
15 morning of trial, Judge Dlott granted the statutory
16 immunity to Steven Rennick, Junior, thereby freeing
17 him from his Fifth Amendment right not to testify
18 and thereby compelling his testimony if it was
19 needed at Mr. Rennick, Senior's testimony.

20 JUDGE MERZ: Is that, where is
21 that in the record?

22 MR. GREGER: Your Honor, I do not
23 know other than through the government's file that
24 that exists. So I can't tell you that it was ever
25 made of record.

1 JUDGE MERZ: Then how can I take
2 judicial notice of it?

3 MR. GREGER: Because I don't know
4 what's in your record. I don't know if the Court
5 has privy to portions of records that the public
6 would never see thereby being an application for
7 statutory immunity pursuant to 6002 or 6001.

8 JUDGE MERZ: I am not aware of
9 whether any such application was made.

10 MR. GREGER: Mr. Brichler is here,
11 perhaps we can ask him.

12 JUDGE MERZ: All right.

13 BY MR. GREGER:

14 Q. Do you know why Mr. Benjamin pled to a
15 bill of information and not one of the counts in
16 the superseding indictment?

17 A. No. Can you ask me that again?

18 JUDGE MERZ: Do you know why Mr.
19 Benjamin pled to a bill of information and not to
20 one of the counts in the superseding indictment?

21 THE WITNESS: I don't know.

22 BY MR. GREGER:

23 Q. Mr. Rennick, did you terminate the
24 services of Mr. Gallagher at some point?

25 A. Yes.

1 Q. Why?

2 A. Because he made me lie, and he lied to
3 me.

4 Q. Did anyone tell you that Ken Lawson was
5 inside of the courtroom actually defending you and
6 telling the court what a raw deal you got when you
7 were actually, when he was actually representing
8 Mr. Elliott?

9 A. Yes, Tony Battles came out in the
10 hallway. I was out there with Mr. Gallagher, my
11 sister, and couple of --

12 Q. What did you do as a result of Mr.
13 Battles coming out and telling you that Mr. Lawson
14 was arguing about your raw deal in the defense of
15 Elliott?

16 A. We went right back in the courtroom.

17 Q. What happened next?

18 A. When we got in there, Mr. Lawson was
19 telling the judge how I got shot and how policemen,
20 they get shot, they get a medal. I got shot and I
21 didn't get anything and he wanted to put Mr. John
22 Mercado on the stand because they were saying that
23 I didn't do things by the book on being a CI.

24 Q. Let me ask you, Mr. Rennick, if this
25 was in the portion of the record that we've already

1 talked about in this hearing where they were
2 arguing over whether Mr. Elliott was to get
3 substantial assistance or not?

4 A. Yes.

5 Q. There was a discussion, did you hear a
6 discussion in open court that's been reflected in
7 the record that we've already gone over between Mr.
8 Lawson and Mr. Brichler about whether or not Mr.
9 Elliott should get substantial assistance?

10 A. When Mr. Lawson wanted John Mercado to
11 put him on the stand to have a hearing, Mr.
12 Brichler asked for it to be off the record and him
13 and Mr. Lawson talked, they talked right up, you
14 couldn't hear what they were saying. As soon as
15 they broke up, Mr. Brichler said to go back on the
16 record and that him and Kenny Lawson had talked and
17 Kenny Lawson has never lied to him and that he was
18 going to give Matt a 5K1 so there was going to be
19 putting no John Mercado on the stand.

20 Q. Did you ultimately hire Ken Lawson?

21 A. He kind of hired himself to me out in
22 the hallway.

23 Q. Tell the judge about that.

24 A. After the spiel with me getting shot
25 and everything, we were out in the hallway and he

1 gave me his card and said, come to my office, call
2 and make an appointment and come to my office
3 tomorrow, I'll get all of this dropped. I knew you
4 weren't getting, I'll get all of this dismissed.
5 So I said okay.

6 So I called. He wanted \$15,000.
7 I took \$15,000 check down and he said he would get
8 the truck back and get everything dismissed. So
9 that was the start of every week or couple of days
10 he'd call and want another \$15,000. He said he was
11 going to go over to Judge Dlott's house, you know,
12 he was just blowing smoke. So I kept giving him
13 money.

14 JUDGE MERZ: How much did you give
15 him?

16 THE WITNESS: \$80,000. And it
17 gets worse. I mean, he tells me when I go to
18 prison, he said you won't be there anymore than
19 30 days or so. He talked to Judge Dlott and was
20 going to get everything taken back and I don't hear
21 from him in like 60 days, 90 days. My daughter
22 calls him and he said, would you tell your F dad if
23 he don't quit F'ing this or that, he's going to
24 wind up doing all of his time.

25 So my sister called Mr. Lawson and

1 tried to get this straightened out about cussing at
2 my daughter and that he got into it with her and he
3 said, I'm off Steve's case. My wife called and
4 apologized for my sister. He said bring \$30,000
5 down. It was unbelievable. They didn't have
6 \$30,000 so they just, I told them do not go down
7 there, he's just playing you.

8 So you know, but she thought it
9 was a chance that, you know, this guy said bring
10 30,000. We'll get it all taken care of. And I
11 told them just don't do it.

12 BY MR. GREGER:

13 Q. Mr. Rennick, did anything happen at the
14 sentencing between yourself and your attorney?

15 A. Yes, we got out in the hallway and Bill
16 after we went through with the judge about we
17 wanted to do an appeal --

18 Q. No, inside of the courtroom at the time
19 she started to impose sentence, does anything
20 happen between you and Mr. Gallagher?

21 A. Yes, the night before.

22 Q. Go ahead.

23 A. We went down to Mr. Gallagher's office
24 and he said he talked to Mr. Brichler and that he
25 was going to give me a sentence reduction. He had

1 to do a motion. So he said he was going to do that
2 motion. He was going to get it all straightened
3 out, and I would get a sentence reduction.

4 Q. Who was going to do the motion?

5 A. Bill Gallagher.

6 Q. Bill Gallagher was going to do a motion
7 to get a sentence reduction?

8 A. Yes.

9 Q. What happened?

10 A. We got to court.

11 Q. Did you go to Gallagher's office the
12 night before?

13 A. Yes.

14 Q. How many drafts of the motion did you
15 review?

16 A. None.

17 Q. Go ahead.

18 A. So when we got to the sentencing and
19 she started reading everything off and Mr.
20 Gallagher has just agreed and agreed and said he
21 didn't blame nobody for anything. I said shit,
22 this is, something is not working like Mr.
23 Gallagher said it was. I don't hear the sentence
24 reduction in there and it just, you know, the gavel
25 is ready to fall, something is not right and Mr.

1 Gallagher leaned over to me and said, shh, don't
2 say no more. So I didn't.

3 Q. Did you use the term oh, shit in open
4 court?

5 A. Yes, sir.

6 Q. What did Mr. Gallagher tell you to do
7 after you used those terms in open court?

8 A. He told me to shh, don't say no more.

9 MR. GREGER: Can I have a moment,
10 your Honor?

11 JUDGE MERZ: Yes, sir.

12 MR. GREGER: Your Honor, I
13 apologize, I thought I had this marked and I'm sure
14 I do but I'm going to refer to the Joint Appendix,
15 JA page 121 that was in appendix one filed in
16 support of Mr. Rennick's 2255 and those are
17 consecutively numbered, and if I may approach the
18 witness, your Honor? I'm sorry, let me give the
19 court -- may I approach, your Honor?

20 JUDGE MERZ: Yes.

21 BY MR. GREGER:

22 Q. Mr. Rennick --

23 JUDGE MERZ: This is part of the
24 Joint Appendix in the court of appeals?

25 MR. GREGER: Yes, your Honor. It

1 would have been but it's now been appended to his
2 2255.

3 JUDGE MERZ: Right.

4 BY MR. GREGER:

5 Q. Mr. Rennick, I'm going to proffer to
6 you, represent to you this is page 14 of the Joint
7 Appendix page 121. Does your use of that curse
8 word appear at line 15?

9 A. Yes.

10 Q. And are there any shh that you say Mr.
11 Gallagher told you to do reflected on that?

12 A. Yes, on line 23.

13 Q. And what did you say to Mr. Gallagher?

14 A. I can't shh I've got to tell them about
15 Mercado.

16 Q. Did Mr. Gallagher tell you that at your
17 sentencing Mr. Brichler would agree that you should
18 get some time off of your sentence?

19 A. Yes.

20 Q. Did Mr. Brichler agree to give you that
21 time off?

22 A. No.

23 Q. Tell the judge why you used the word,
24 profanity, S-H word in open court.

25 A. Because everything that Gallagher told

1 me was not true. I mean nothing was right.

2 Q. And when the judge started to pronounce
3 a 63-month sentence is that when you used that
4 profanity?

5 A. Yes.

6 Q. Did the court give your attorney the
7 right to call Agent Mercado to the stand to ask him
8 questions?

9 A. Yes.

10 Q. Was that to support your motion for
11 substantial assistance or lesser sentence?

12 A. Yes.

13 Q. Did your attorney decline that right?

14 A. Yes.

15 Q. Did Matthew Elliott tell you on the
16 morning of trial that one of the reasons that you
17 should plead is that if you did not do so you would
18 mess up Elliott's future and ruin his life?

19 A. Yes.

20 Q. Did Matthew Elliott tell you on the
21 morning of trial that you would be able to
22 cooperate, that you would never do much time and
23 that you might get probation?

24 A. Yes.

25 MR. GLASSMAN: Objection. I think

1 that is hearsay.

2 MR. GREGER: Your Honor, it's not
3 used for the truth of the matter asserted it's that
4 he took action as a result of that.

5 JUDGE MERZ: Also it's a verbal
6 act by Mr. Elliott. Overruled.

7 MR. GREGER: Thank you.

8 BY MR. GREGER:

9 Q. Mr. Rennick, tell the Court about the
10 involvement of the New Mexico Department of
11 Transportation?

12 A. Well, when we were on our way back from
13 Arizona --

14 Q. Who is we?

15 A. Kareem and I and we were pulling, we
16 had to go through weigh stations. We went through
17 the weighing stations. I didn't have any placards
18 or numbers on the tractor so when I pulled in to
19 the scale, the guy said pull around back and come
20 in. So I took my paperwork in and he seen it had a
21 motor home license. He asked why I didn't have a
22 placard. It was going to be a race car and it had
23 a motor home license plate on it. He said I need
24 to see what it is. He came out in the lot, got up
25 in the truck and looked at it. I told him that I

1 had the state of Ohio patrol inspect it and they
2 said it was fine. He said, well if that's the way
3 they do it in Ohio, it had to be all right. So we
4 went ahead and left.

5 Q. Mr. Rennick, is this the time that the
6 government says you are transporting 500 pounds of
7 marijuana in the same tractor that has now been
8 inspected by the New Mexico Department of
9 Transportation?

10 A. Yes.

11 Q. Did you hire or pay to hire an
12 accountant or a CPA for any purpose of defending
13 you at your trial?

14 A. Yes.

15 Q. What was the use of the CPA or
16 accountant supposed to be for?

17 A. He did the S and S Racing account and
18 he was to go over all of the cash that was in for
19 the sponsorship of the car into, see where the
20 deposits were and who it went to and he did the
21 checkbook and income tax statement on it. He filed
22 the taxes and everything on S and S Racing.

23 Q. The accountant or CPA, did you
24 understand was going to be prepared to testify that
25 all of the alleged currency transactions were, in

1 fact, not related to marijuana, that they were
2 related to sponsorships and he could trace the
3 money?

4 A. Yes.

5 Q. Did you learn on the morning of your
6 trial that Kenneth Lawson, Matthew Elliott, William
7 Gallagher and Robert Brichler met to discuss the
8 resolution of your case by way of a plea?

9 A. The morning of the trial?

10 Q. Morning of the trial.

11 A. Yes.

12 Q. Were you invited to that meeting?

13 A. No.

14 Q. Did you know about the meeting before
15 it occurred?

16 A. No.

17 Q. Did you authorize that meeting?

18 A. No.

19 Q. Let's talk about Matt Elliott for a
20 moment. Were you close with Mr. Elliott?

21 A. Yes.

22 Q. Did you consider him like a son?

23 A. Yes.

24 Q. Did he come to you at the time of the
25 pleas?

1 A. Yes.

2 Q. Did he tell you what you've already
3 testified to about his life being ruined and his
4 young children?

5 A. Yes.

6 Q. Was he crying?

7 A. Yes.

8 Q. Did he tell you it was a package deal,
9 if you didn't plead, he couldn't get his deal?

10 A. Yes.

11 Q. Was Wayne Benjamin initially charged
12 with any criminal offense in the first indictment?

13 A. No.

14 Q. What do you understand happened to
15 cause him to be included in the second indictment?

16 A. Wayne had called me and said that he
17 called down to Mr. Brichler and he was going to go
18 down and talk to him. We never brought, there was
19 never no marijuana in the camper or anything when
20 we went to Arizona so he went down and talked to
21 Mr. Brichler and he called me when he got back and
22 said he talked to Mr. Brichler and he sat there at
23 the table and said here's what we want you to say,
24 and Wayne said, I can't do that, it's a lie and Mr.
25 Brichler got up and said, you go on home, we'll

1 indict you later, and the next day or two he was
2 indicted.

3 Q. Was your son going to be compelled to
4 testify at trial?

5 A. Yes.

6 Q. Your son had previously been indicted
7 and then was dismissed from the indictment; is that
8 true?

9 A. Yes.

10 Q. Did you conspire with your son to
11 distribute marijuana?

12 A. No.

13 Q. Did you conspire with anyone to possess
14 with the intent to distribute marijuana?

15 A. No, never.

16 Q. Did you give a pound of marijuana to
17 Wayne Benjamin?

18 A. No.

19 Q. Did you make sure that there was a
20 supply of marijuana in a locked and leased portion
21 of the warehouse in College Hill from which Matt
22 Elliott got his 50 pounds?

23 A. No.

24 Q. Did the fact that the government was
25 going to compel your son to testify against you

1 affect your decision in making your plea?

2 A. Yes.

3 Q. What way?

4 A. Well, I felt like I had three sons who
5 was going to get, between Matt, Wayne and my son,
6 it just, it got -- I just didn't know what was
7 going on. I was getting squeezed and pressured by
8 Matt, crying. He was just, you know, next thing I
9 knew I didn't have a choice and I had to say yes.

10 Q. Was your son represented by counsel?

11 A. Yes.

12 Q. Who selected your son's counsel?

13 A. I did.

14 Q. Tell the Court about that.

15 A. Well, when we got arrested, I called
16 Mr. Goldberg and said, don't say nothing to them.
17 I said, I want you to represent my son, I need you
18 to pick somebody for me. So he said he would. He
19 told us do not say anything to the police and they
20 kept my son handcuffed to the sheriff with ten
21 hours and kept badgering him and badgering him. I
22 told him, I called a lawyer and we were not going
23 to say no more until the lawyer came, until the
24 lawyer came and they said they had talked to Mr.
25 Goldberg and he said we could go ahead and talk to

1 them.

2 I said, let me call Mr. Goldberg
3 one more time to verify this. This is John
4 Mercado. He said no, we can't let you call again.
5 To make a long story short, the next day or two, I
6 called Goldberg. I told him that he said we could
7 talk to him. I told you, Steve, at the beginning
8 not to say anything. I never told them nothing
9 about talking to you.

10 Q. Is Richard Goldberg at your trial on
11 the day that it was supposed to start?

12 A. Yes.

13 Q. What caused Mr. Goldberg to be at that
14 trial even though he was representing your son?

15 A. We wanted, I wanted him there just to
16 represent, you know, Steve's interest, to protect
17 him and that and make sure that everything was
18 going all right.

19 Q. Who paid him?

20 A. Earth Management Trucking.

21 Q. How much did you pay Goldberg to be at
22 your hearing to protect your son's interest?

23 A. \$2,500.

24 Q. What happened on the morning of trial
25 as it related to your son?

1 A. The morning of the trial?

2 Q. Is that when the immunity was sought or
3 do you know?

4 A. I don't know for sure. Mr. Goldberg
5 said he was representing Steve so he didn't really
6 tell me too much.

7 Q. Fair enough. Did your relationship
8 with Mr. Elliott have an effect on your decision to
9 enter into a fictional plea?

10 A. Yes.

11 Q. Did the actions of the government
12 toward your son have an effect on your decision to
13 enter into the fictional plea?

14 A. Yes.

15 Q. Did you know that Mr. Elliott was going
16 to receive a benefit from the government if he got
17 you to plead?

18 A. No.

19 Q. After you entered your plea, did you go
20 out in the hallway?

21 A. Yes.

22 Q. Were the lawyers gathered there?

23 A. Yes.

24 Q. Were the defendants gathered there?

25 A. Yes.

1 Q. Tell the Court what happened.

2 A. Well, all three of us started asking
3 the lawyers why did they read these lies to the
4 judge and they said, don't worry, it's just a
5 fictional plea and we all just lost it. We want
6 that taken out. We never knew they were going to
7 say that to begin with. So, again, they just told
8 us, don't worry, it's just a fictional plea.

9 JUDGE MERZ: And all three of you,
10 you, Elliott, and Benjamin all said that?

11 THE WITNESS: Yes, sir.

12 MR. GREGER: And we know Benjamin
13 should have said that because that was a Holy
14 concocted crime and date.

15 BY MR. GREGER:

16 Q. Were you upset with your attorney after
17 the pleas?

18 A. Yes, I was.

19 Q. Were you present when the discussion
20 happened in court about Mr. Elliott getting his 5K
21 or substantial assistance motion?

22 A. Yes.

23 Q. Did you hear that discussion on the
24 record between Mr. Lawson and Mr. Brichler that is
25 contained in the exhibit that we've already talked

1 about?

2 A. Yes, I did.

3 Q. Did you hear Mr. Brichler say that the
4 substantial assistance for Matthew Elliott was only
5 limited to what he got you to do on the day of your
6 trial?

7 A. Make the trial go away, he said. He
8 said Matt wasn't getting no award for me talking
9 into being a CI. It was just for making the trial
10 go away.

11 Q. Was Mr. Elliott rewarded for getting
12 you to plead?

13 A. Yes.

14 Q. He got a sentence of 14 months, did he
15 not?

16 A. Yes.

17 Q. That was after Mr. Brichler suggested
18 to the court about a one third reduction; is that
19 true?

20 A. Yes.

21 Q. So he would have been in a 21 to
22 27-month, taking a third off, would have been
23 seven. He should have been 14 range and then
24 agreed on a sentencing guideline range of 12 to 18
25 that would have then contained the 14; is that

1 true?

2 A. Yes.

3 MR. GREGER: Your Honor, I'm going
4 to ask the Court to take judicial notice that the
5 time the court took the pleas, August 18th, the
6 federal sentencing guidelines were still mandatory.

7 JUDGE MERZ: So ordered.

8 THE WITNESS: Can I take a minute
9 to get a drink.

10 BY MR. GREGER:

11 Q. Did your attorney make any --

12 JUDGE MERZ: Hold on just a
13 second.

14 MR. GREGER: I apologize.

15 JUDGE MERZ: Does the marshall
16 service have a need to switch?

17 UNIDENTIFIED SPEAKER: We do.

18 JUDGE MERZ: Okay. Go ahead, Mr.
19 Greger.

20 BY MR. GREGER:

21 Q. Did your attorney make any
22 recommendations to you at the time of the plea
23 discussions as to what the sentence might be?

24 A. No.

25 Q. Did you ever have a discussion with

1 anyone about what the term minimum mandatory meant?

2 A. No.

3 Q. When the judge was going through your
4 pleas, all three of you, did she throw that in at
5 the end, oh, by the way, I almost forgot there is a
6 five-year minimum mandatory here?

7 A. Yes.

8 Q. How many lawyers were present out in
9 the hallway after you entered your pleas, three or
10 four?

11 A. Four.

12 Q. Who were the four?

13 A. Kenny Lawson, Bill Gallagher, Richard
14 Goldberg, and Greg Cohen.

15 Q. Did you ask your lawyer to accompany
16 you to the meeting with Agent Mercado so the terms
17 of what you were supposed to do to qualify for the
18 downward departure were fully understood?

19 A. Yes, I begged him.

20 Q. Did he go with you?

21 A. No.

22 Q. Mr. Rennick, did you, in fact, make
23 trips to Arizona with other individuals?

24 A. Yes.

25 Q. Did you admit, in fact, that you had

1 made those trips?

2 A. Yes, sir.

3 Q. Were those trips for drug
4 transportation purposes?

5 A. No, sir.

6 Q. What were they for?

7 A. We had taken, Phillip had a promotion,
8 Wild African Promotions for the reggae. He put out
9 reggae shows out in Phoenix. He had artists come
10 over from Jamaica and they would do one in
11 Cincinnati and do one in Arizona, and go to
12 California. What we did we took, there were four
13 guys plus Phillip and Kareem and Wayne. We take
14 them. While on the way out, they would get their
15 program together. They were back in the back and
16 do their music selection. So then we drop them
17 off.

18 Very first one we went to we
19 helped them set up. It was at like a bar with a
20 big opening where they were having this at and we
21 were there for probably an hour. It was so loud, I
22 said this is not for me.

23 Q. Did you actually attend one of the
24 reggae concerts that they told you that was their
25 business?

1 A. Yes. I really, I went to two in
2 Cincinnati and I went to one of the ones in
3 Arizona.

4 Q. Did you help set up for one of the
5 concerts?

6 A. Yes.

7 Q. Are these the individuals to whom you
8 leased a portion of the warehouse to?

9 A. Yes.

10 Q. Is that Mr. Cole and Mr. Davidson?

11 A. Yes.

12 Q. How did you know what name did Davidson
13 use with you?

14 A. Phillip.

15 Q. Phillip Davidson?

16 A. Yes.

17 Q. Did you until the indictment was
18 returned know that he had other names?

19 A. Never.

20 Q. Have you ever heard him called anything
21 but Phillip?

22 A. Never.

23 Q. Did you do anything but lease them
24 space?

25 A. No, that's all I did.

1 Q. Did you ever bring 500 pounds of
2 marijuana from Arizona and put it in the locked
3 portion of the warehouse in College Hill that you
4 had leased to them?

5 A. No.

6 Q. Did you purchase a Freightliner
7 tractor?

8 A. Yes.

9 Q. What purpose?

10 A. To haul our race cars.

11 Q. How many race cars does the team have?

12 A. Three.

13 Q. Was there ever a trailer attached to
14 the fifth wheel of the tractor?

15 A. No, sir.

16 Q. Was it in the pristine condition that
17 Mr. Cohen testified to this morning?

18 A. Yes, sir, there was no scratch on the
19 metal.

20 Q. Did you ever purchase a trailer that
21 would be pulled by the Freightliner tractor?

22 A. No.

23 Q. Did you understand it that the
24 government's contention was that you hauled
25 500 pounds of marijuana in the Freightliner tractor

1 not a trailer?

2 A. No.

3 Q. Is that what you understood the
4 government's contention was, it was in the tractor?

5 A. They said it was in a tractor trailer.
6 So there was never a trailer on it.

7 Q. Because --

8 A. Because, because I didn't own a
9 trailer.

10 Q. Was a pre-sentence report prepared in
11 your case?

12 A. Yes.

13 Q. Did you review that report with your
14 attorney?

15 A. No.

16 Q. Did you tell the judge that you had?

17 A. Yes.

18 Q. When did you first see your
19 pre-sentence report?

20 A. When I was in Lexington.

21 Q. How did you receive that pre-sentence
22 report when you were in Lexington?

23 A. My sister sent it to me in the mail.

24 Q. Did you look through that pre-sentence
25 report and read it when you received it from your

1 sister by mail in Lexington?

2 A. Yes.

3 Q. Were there any facts in that
4 pre-sentence report that you disagreed with?

5 A. Yes.

6 Q. Give me an example.

7 A. I think there was like 23 of them, and
8 I never knew you could disagree with anything on
9 it. It would be hard for me to say right now
10 without looking at it.

11 Q. Were there facts surrounding a camper,
12 if you recall?

13 A. Oh, yes, camper went to Arizona and
14 picked up marijuana and it wasn't true.

15 JUDGE MERZ: Let me make sure I
16 understand what you are saying to me, Mr. Rennick.
17 You had a chance to review this report before you
18 were sentenced. You lied to Judge Dlott and said
19 that you had reviewed it and then you found later
20 23 things in it that you don't think are true.

21 MR. GREGER: That's not correct,
22 your Honor.

23 JUDGE MERZ: My question --

24 MR. GREGER: I understand, but
25 that assumes --

1 JUDGE MERZ: My question --

2 THE WITNESS: When Bill Gallagher
3 had me sign it he said you don't need to read it,
4 everything is fine.

5 JUDGE MERZ: All right.

6 THE WITNESS: So I didn't read it.

7 JUDGE MERZ: Okay.

8 BY MR. GREGER:

9 Q. The judge assumes that you knew you had
10 a right to review it. Did you know you had a right
11 to review your pre-sentence investigation?

12 A. No.

13 Q. The judge, when she was asking
14 questions at sentencing, asked if you reviewed
15 documents, didn't she? Let me refresh your
16 recollection. I think it's Joint Appendix page
17 110.

18 JUDGE MERZ: I think before we do
19 that we are going to take ten minutes. We are in
20 recess.

21 (Discussion held in chambers
22 between Judge and Counsel appearing under separate
23 cover.)

24 (WHEREUPON, a recess was taken.)

25 MR. GREGER: I'd like to cite the

1 Court to the Joint Appendix pages 110 through 112
2 which is a portion of the sentencing transcript
3 where Judge Dlott mentions what she has reviewed,
4 one of which is the pre-sentence report but that
5 she sites two other documents relevant to
6 sentencing and her questions are whether or not
7 they have received copies of the documents.

8 Defendant says yes, your Honor,
9 because one of the documents he authored which is
10 the December 2, 2003 letter and, secondly, he's
11 aware of the motion for downward departure which
12 was filed on January 26th this year. As he so
13 testified it was going to be prepared by his
14 attorney. If the Court then looks at 111 and 112
15 there is never an engagement of Mr. Rennick again
16 as it relates to objections in the pre-sentence
17 report. The court simply asks counsel whether or
18 not there are objections.

19 JUDGE MERZ: I have that, thank
20 you.

21 MR. GREGER: You are welcome.

22 BY MR. GREGER:

23 Q. Have you ever been prosecuted in
24 federal court before this crime?

25 A. Yes.

1 Q. When?

2 A. I can't remember. '89, I think.

3 Q. '89?

4 A. Yes.

5 Q. Did you go through the same

6 pre-sentence report process in '89?

7 A. I don't remember.

8 Q. Let me ask you, Mr. Rennick, was one of
9 the facts that was read by the government at the
10 time all three of you pled that Mr. Benjamin
11 obtained a pound of marijuana from you on or about
12 July 18, 2002. Was that one of the facts that you
13 heard read?

14 A. Yes.

15 Q. Were you in the state of Ohio on that
16 date?

17 A. No.

18 Q. Where were you?

19 A. On our way to Phoenix, Arizona to pick
20 up the tractor.

21 Q. Was that one of the facts that you
22 brought to the attention of Mr. Gallagher after
23 court as having caused your anxiety or upsettedness
24 for lack of a better term after the pleas?

25 A. Yes.

1 Q. Did Mr. Gallagher talk to you about the
2 medications that you were on at the VA?

3 A. Yes.

4 Q. How many pages of medical records did
5 you deliver to Mr. Gallagher, you or one of your
6 family members, deliver to Mr. Gallagher so he
7 could get a complete picture of your medical
8 background?

9 A. 380.

10 Q. What did he tell you about the
11 medications, if the court asked about them?

12 A. He said I had to say that I wasn't
13 taking any medications that would effect my
14 judgment or anything.

15 Q. Was there evidence, Mr. Rennick, that
16 Matthew Elliott had engaged in illegal conduct
17 between himself and Mr. Moore?

18 A. I think there was a letter from Eddie
19 Moore.

20 Q. Had Mr. Elliott discussed with you
21 before August 18, 2003 resolving his case by way of
22 plea?

23 A. I'm sorry?

24 Q. Did Mr. Elliott talk to you before
25 August 18, 2003 that he wanted to resolve his case

1 by pleading to something?

2 A. No.

3 Q. Did Wayne Benjamin talk to you before
4 August 18, 2003 that he wanted to resolve his case
5 by way of a plea?

6 A. No.

7 Q. Was, in fact, Mr. Elliott adamant about
8 going to trial that morning?

9 A. Very, yes.

10 Q. Mr. Lawson did not misrepresent Mr.
11 Elliott's desire, strong desire, to go to trial
12 that morning?

13 A. No, he didn't.

14 Q. Mr. Rennick, do you want this Court to
15 vacate your plea?

16 A. Yes.

17 Q. Mr. Rennick, why?

18 A. Because I wasn't guilty.

19 Q. Do you believe that you had the
20 effective assistance of counsel in the plea
21 process?

22 A. I'm sorry?

23 Q. Do you believe you had effective
24 assistance of counsel in the plea process?

25 A. No.

1 Q. Do you believe that the government
2 agent, Mr. Elliott, brought pressure to bear on
3 you --

4 JUDGE MERZ: Sustained,
5 characterization.

6 BY MR. GREGER:

7 Q. Did you know that Mr. Elliott was going
8 to be benefit by getting you to plead?

9 A. No.

10 Q. When for the first time did you find
11 out that Mr. Elliott was going to benefit from the
12 government if he could convince you to plead?

13 A. At the sentencing.

14 Q. Do you realize if this court vacates
15 the plea and returns this case to the district
16 court, you could end up going to trial on this
17 matter?

18 A. Yes.

19 Q. Is that what you want to do?

20 A. Yes.

21 JUDGE MERZ: You have an
22 understanding what your sentence could be if you
23 went to trial or convicted?

24 THE WITNESS: Yes.

25 JUDGE MERZ: What is it?

1 THE WITNESS: 5 to 40. I don't
2 know for sure, I'm sorry, your Honor, I don't know.

3 JUDGE MERZ: Okay.

4 MR. GREGER: It's 5 to 40, minimum
5 five years. Do you know whether or not there is a
6 statute that mandates you get credit for the almost
7 63 months that you've already done?

8 THE WITNESS: No.

9 BY MR. GREGER:

10 Q. You are willing to take that risk?

11 A. Yes.

12 MR. GREGER: Are we on 9?

13 JUDGE MERZ: Yes, the next one
14 will be 9.

15 MR. GREGER: Thank you, your
16 Honor.

17 BY MR. GREGER:

18 Q. Mr. Rennick, I've handed you what is
19 marked for identification as Rennick's Exhibit 9
20 for the purposes of this hearing. Can you identify
21 that for the record, please?

22 A. It's a check from Provident Bank for
23 the payment of a Freightliner in Phoenix, Arizona,
24 Cunningham Truck Service.

25 Q. From what account was this check drawn?

1 A. S and S Racing.

2 Q. Were the funds \$83,993 derived from
3 illegal proceeds of marijuana distribution?

4 A. No, sir.

5 Q. Handing you what is marked for purposes
6 of the record as Exhibit 10, can you identify that
7 for the record, please?

8 A. It's page six out of my VA medical
9 records.

10 JUDGE MERZ: And seven?

11 THE WITNESS: I'm sorry, yes.

12 BY MR. GREGER:

13 Q. Page six and seven?

14 A. Yes, sir.

15 Q. Who, is this a portion of the 380 pages
16 that you gave to Mr. Gallagher?

17 A. Yes.

18 Q. Now, the date of this is after your
19 plea, the date in the right-hand corner is
20 January 26, 2004; is that correct?

21 A. Yes.

22 Q. Do the medications, however, cover the
23 period, covered by the plea agreement?

24 A. Yes.

25 Q. And is this just a portion of your

1 medical chart from the VA?

2 A. Yes.

3 Q. Were you on any kind of psychiatric or
4 psychotropic medications at the time that you went
5 before the court on the morning of your plea?

6 A. Yes.

7 Q. What are you being treated for, Mr.
8 Rennick?

9 A. PTSD from Vietnam.

10 JUDGE MERZ: What are or were --
11 BY MR. GREGER:

12 Q. What were you at the time, thank you,
13 your Honor, what were you at the time being treated
14 for and that would be August of 2003 period.

15 A. PTSD.

16 Q. That is post traumatic stress disorder?

17 A. Yes.

18 Q. Does that arrive from your Vietnam
19 experience?

20 A. Yes.

21 Q. Did you, Mr. Rennick, have to shoot a
22 fellow soldier who was burning up before your eyes
23 and whose face was starting to melt to put him out
24 of his agony?

25 A. Yes. I'm sorry.

1 Q. Was there any other traumatic event
2 involving a truck that contributed to your PTSD?

3 A. Yes.

4 Q. Were you charged with vehicular
5 homicide in the death of a person who was in a
6 truck with you?

7 A. Yes.

8 Q. Did that truck slide off of the road?

9 A. Yes.

10 Q. Did you go to trial on that man's
11 death?

12 A. Yes.

13 Q. What was the result?

14 A. Not guilty.

15 Q. Do your Vietnam buddies visit you?

16 A. Yes.

17 Q. What are you currently being treated
18 for?

19 A. PTSD flashbacks and depression.

20 Q. I'm going to hand you what is marked
21 for identification -- are you okay?

22 A. I'm all right.

23 Q. I'm going to hand you what is marked
24 for identification as Rennick's Exhibit 11 for
25 purposes of this hearing. Can you identify that

1 for the record, please.

2 A. It's a page out of a national dragster
3 with an advertisement for race car trailers,
4 Michael Brotherton in Texas.

5 Q. Michael Brotherton,
6 B-R-O-T-H-E-R-T-O-N, in Texas?

7 A. Yes, sir.

8 Q. Did you and Wayne Benjamin make a trip
9 to Texas and then to Arizona and back for purposes
10 of picking up the Freightliner tractor and looking
11 at, through Mr. Brotherton trailers to go along
12 with that tractor?

13 A. Yes.

14 Q. Is this an example of the magazine that
15 drew your attention to Mr. Brotherton in Texas?

16 A. Yes.

17 Q. Did you travel leaving the state of
18 Ohio in middle July of 2002 and return toward the
19 end of July, 2002?

20 A. Yes.

21 Q. That is a period where Mr. Benjamin
22 said you gave him a pound of marijuana, did you
23 give him that pound of marijuana while you two were
24 traveling across the United States to pick up the
25 Freightliner tractor and look at trailers?

1 A. No, sir.

2 Q. Did you actually go to Mr. Brotherton's
3 business?

4 A. Yes.

5 Q. How many days did you spend at or about
6 Mr. Brotherton's house?

7 A. We were there about one day. We got
8 there on, I think, the 17th or 18th.

9 Q. Of July of 2002?

10 A. Yes.

11 Q. After Mr. Brotherton's business in
12 Texas, where did you go?

13 A. To Phoenix, Arizona.

14 Q. Did you pick up the Freightliner in
15 Arizona?

16 A. It wasn't ready yet, we had to wait out
17 there until, I think, the 23rd.

18 Q. Handing you what's been marked for
19 purposes of the record as Rennick's Exhibit 12 for
20 this hearing, can you identify that for the report?

21 A. It's a delivery receipt when we picked
22 up the tractor. I had to sign for it when we gave
23 them the check.

24 Q. That date of 7/23/02 is written next to
25 your signature, isn't it?

1 A. Yes.

2 Q. Did you sign this delivery receipt?

3 A. Yes, sir.

4 Q. Does that acknowledge receipt of the
5 Freightliner?

6 A. Yes, sir.

7 Q. And that's just the tractor portion?

8 A. Yes, sir.

9 Q. Is that the trip that Mr. Benjamin was
10 on with you?

11 A. Yes, sir.

12 Q. Handing you what's been marked for
13 purposes of the record as Rennick's Exhibit 13 for
14 this hearing, can you identify that for the record,
15 please.

16 A. It's a vehicle invoice showing how the
17 payments were made on the truck, the down payment
18 and the final payment due.

19 Q. Mr. Rennick, was there anything about
20 the purchase of the Freightliner that you needed to
21 hide or disguise in any way?

22 A. No, sir.

23 Q. Did you turn over all of these
24 documents to the accountant or the CPA for purposes
25 of him being then able to track the dollars in from

1 where the dollars originated for purposes of
2 disputing or defending against the government's
3 accusations that the money used to purchase the
4 Freightliner came from illegal activity of the
5 distribution of marijuana?

6 A. I gave everything to the bookkeeper,
7 yes.

8 MR. GREGER: Thank you, Mr.
9 Rennick, I appreciate it.

10 JUDGE MERZ: Cross?

11 CROSS EXAMINATION

12 BY MR. GLASSMAN:

13 Q. Good afternoon. Make sure I understand
14 a few points of your testimony. So Bill Gallagher
15 didn't tell you about the mandatory minimum before
16 the plea?

17 A. No, sir.

18 Q. And he didn't tell you about
19 substantial assistance before the time of the plea?

20 A. About the what?

21 Q. The possibility of substantial
22 assistance to the government cooperating?

23 A. No.

24 Q. During the plea, during the change of
25 plea hearing when you pled guilty --

1 A. Can I get a drink real quick?

2 JUDGE MERZ: Sure.

3 THE WITNESS: I'm sorry.

4 BY MR. GLASSMAN:

5 Q. That's all right. During the change of
6 plea hearing Bill Gallagher whispered in your ear
7 that you were entering a fictional plea?

8 A. Yes, after Mr. Brichler read the thing
9 and the judge was asking me if that was true.

10 Q. And so just tell me specifically what
11 happened.

12 A. Well, I was shaking my head no when she
13 was asking me and Mr. Brichler said I had to say
14 yes, it was just a fictional plea.

15 Q. Mr. Brichler said that?

16 A. I mean Mr. Gallagher.

17 Q. Mr. Gallagher told you that during the
18 plea hearing?

19 A. He was reading when Mr. Brichler read
20 the paper, I don't know what it is called.

21 Q. What did it mean to you when he said
22 that?

23 A. I was confused. I didn't know, really.
24 I'm thinking fictional means I'm lying but, you
25 know, I thought it was a lie.

1 Q. And did you speak up at that point and
2 say anything?

3 A. No, he told me everything would be all
4 right.

5 Q. After the change of plea you talked
6 about how you were supposed to cooperate with the
7 RENU agent. How did it come about that that was
8 proposed?

9 A. When we were out in the hallway and I
10 was loosing it with Mr. Gallagher on fictional plea
11 thing, he came in and said he talked to Mr.
12 Brichler. If I could work with them to give some
13 assistance, I would get, I could possibly get
14 probation.

15 Q. That's the first time that you talked
16 about cooperating?

17 A. Yes.

18 Q. And what did you say in response to
19 that?

20 A. I said yes, I would.

21 Q. Did you have any ideas about how you
22 were going to go about doing that?

23 A. No.

24 Q. Did you have any idea as to how the
25 RENU agent thought you would do it?

1 A. When Bill did say that, I told Bill all
2 I could do is take them to where I dropped off
3 Phillip and Kareem, that's all I knew. That was
4 evidently going to be good enough. I'm sorry.

5 Q. Sometime after you pled guilty but
6 before sentencing, you looked over the pre-sentence
7 report?

8 A. No.

9 Q. You never looked it over?

10 A. No.

11 Q. And you never discussed it with your
12 lawyer?

13 A. No, sir.

14 Q. But the night before sentencing, you
15 were, you did meet with your lawyer, Bill
16 Gallagher?

17 A. Yes.

18 Q. And do I understand correctly that he
19 said that at the sentencing hearing Brichler would
20 move for a reduction based on substantial
21 assistance?

22 A. When Duke and I went down to Mr.
23 Gallagher's office, I told him for months I wanted
24 those accusations taken out of those plea
25 agreements or I was going to take back my plea and

1 that night when we went down there and I lost it
2 with him he said he talked to Mr. Brichler and Mr.
3 Brichler had agreed to give a downward departure to
4 me. He was going to do a motion on it.

5 So Duke and I both said, you know,
6 Mr. Gallagher you finally sound like you got a set
7 of balls. Pardon me.

8 JUDGE MERZ: No, tell us what you
9 said.

10 THE WITNESS: And it sounded like
11 the old Bill Gallagher, like he was a fighter. So
12 we figured it was going to happen and the next day
13 came and it just kept going the same way as it
14 always did and I'm thinking anytime Judge Dlott is
15 going to say she's going to abide by the motion
16 that he put in and this and that and nothing
17 happened.

18 BY MR. GLASSMAN:

19 Q. Now, before the judge actually
20 announced the sentence on that day, did she give
21 you an opportunity to say something?

22 A. I can't remember.

23 Q. Did she ask you if you had anything
24 that you wanted to say prior to her announcing the
25 sentence?

1 A. I'm pretty sure she did.

2 Q. And what did you say?

3 A. No, because I kept thinking she's going
4 to come up with the sentence reduction but then
5 when she gave me the 63 months and I said this is
6 bullshit, I said this isn't, now, everything is
7 just nothing like it's supposed to be. So I just,
8 I kind of lost it.

9 Q. Okay. So I'm sorry for hopping back
10 and forth, but let me go back to the change of plea
11 hearing. During the change of plea hearing, did
12 the district judge ask you if you had discussed the
13 charges with your lawyer?

14 A. I don't remember, I don't remember.

15 Q. Had you --

16 A. At the sentencing?

17 Q. At your change of plea hearing when you
18 entered the guilty plea?

19 A. No.

20 Q. You had not discussed the charges with
21 your lawyer?

22 A. No.

23 Q. Did she ask you at that time whether
24 you were satisfied with your lawyer's
25 representation?

1 A. I'm pretty sure she did.

2 Q. What did you say to that?

3 A. I thought I was.

4 Q. And did she ask you whether you were
5 pleading guilty because you were in fact guilty?

6 A. I don't remember, but, I don't
7 remember.

8 Q. Did the district judge ask you if you
9 were pleading guilty because it was your own free
10 and voluntary act?

11 A. I think I remember her saying that.
12 But, yes.

13 Q. And what did you tell her?

14 A. I had to tell her why.

15 Q. Did you tell her yes?

16 A. I'm pretty sure.

17 Q. And was that true?

18 A. No.

19 Q. Why was it not true?

20 A. Because it wasn't correct. I'm sorry,
21 go ahead.

22 Q. Please answer.

23 A. Because I wasn't involved in anything,
24 like I say, it just wasn't true.

25 Q. Let me put that to one side for a

1 moment and ask, she asked you if you were pleading
2 guilty. Did she ask you if it was your own free
3 and voluntary act?

4 A. I think she did.

5 Q. What did you say to that?

6 A. Yes.

7 Q. Was that true?

8 A. No.

9 Q. Why not?

10 A. Because it wasn't a voluntary act. I
11 was forced into it, talked into by Matt to plead.

12 Q. You were talked into by Matt to plead?

13 A. Yes.

14 Q. And how did that make it not voluntary?

15 A. When I went down there I was planning
16 on going to trial. I didn't plan on plea
17 bargaining.

18 Q. During the change of plea hearing did
19 the district judge or the prosecutor read the plea
20 agreement?

21 A. Yeah, I'm almost positive that Mr.
22 Brichler read the plea agreement.

23 Q. And did the district judge ask you if
24 there were any promises other than what was in the
25 plea agreement that caused you to plead guilty?

1 A. Yes.

2 Q. And what did you say to that?

3 A. I was told by Mr. Gallagher I had to
4 say no. There was no promises.

5 Q. Were there other promises?

6 A. Yes.

7 Q. What was that?

8 A. That I was going to get 36 months and
9 Matt and Wayne were going to get probation.

10 Q. Who promised you the 36 months?

11 A. Mr. Brichler.

12 Q. Mr. Brichler promised you that?

13 A. I don't know if Bill Gallagher did. He
14 conveyed it to me.

15 Q. Did Mr. Brichler actually tell you that
16 you will receive 36 months?

17 A. No.

18 Q. You said earlier when during the change
19 of plea hearing you lied to Judge Dlott?

20 A. Yes.

21 Q. What specifically did you lie about?

22 A. Whenever she asked me if it was the
23 truth, if I had been promised anything or I was
24 doing this on my own free will and this and that,
25 you know, at the beginning when I shook my head no

1 and Bill Gallagher said you have to say what she
2 wants to hear, you are not going to get your plea
3 bargain, it was basically everything she asked me
4 about, I didn't tell the truth.

5 Q. Pretty much everything she asked you
6 about you didn't tell the truth?

7 A. Right.

8 Q. You were shot?

9 A. Yes, sir.

10 Q. Subsequent to entering your guilty
11 plea?

12 A. Yes, sir.

13 Q. Did you ever solicit anyone to shoot
14 you?

15 A. No, sir.

16 Q. Did you ever solicit anyone to find
17 another person to shoot you?

18 A. No, sir.

19 Q. Other than Matt Elliott talking to you
20 and telling you that you should plead guilty, was
21 there anything else? Was that, that was pretty
22 much what he talked you into doing or was there
23 anything else that --

24 A. No, sir.

25 Q. That was it?

1 A. That was it.

2 Q. That he just talked to you and said you
3 really need to plead guilty?

4 A. Yes, sir. Because he would lose his
5 family and he would do, you know, he would have to
6 do a bunch of time. He cried and pushed me, I just
7 said yes, I'll do it.

8 MR. GLASSMAN: No further
9 questions.

10 JUDGE MERZ: Thank you. Mr.
11 Greger?

12 MR. GREGER: Nothing, your Honor.
13 Thank you.

14 JUDGE MERZ: I want to clear up
15 one point. You were under, you were taking
16 psychotropic medication, Trazodone?

17 THE WITNESS: Yes, sir.

18 BY MR. GLASSMAN:

19 Q. At the time of the plea?

20 A. Yes, sir.

21 Q. Taking any psychotropic medication now?

22 A. I take two of the, I'd have to look at
23 the thing. I take two now. They've got me
24 regulated where they keep the depression and that
25 down so they've got me where it works pretty good.

1 The Trazodone was killing me. I was not knowing
2 what I was doing, I couldn't keep my eyes open.

3 JUDGE MERZ: You taking something
4 else now though?

5 THE WITNESS: Yes.

6 JUDGE MERZ: Do you know what it
7 is? It's on that medical sheet?

8 THE WITNESS: Yes. On page six
9 it's S-E-R-T-R-A, I'm up to 200 milligrams on that.

10 JUDGE MERZ: Sertraline?

11 THE WITNESS: Yes. And then I
12 take the other one which isn't on here, your Honor,
13 the one that Lexington down at the medical center
14 put me on, it's ten milligrams of both.

15 JUDGE MERZ: Is it for your mental
16 health though?

17 THE WITNESS: It's for my
18 depression, yes, sir.

19 MR. GREGER: Nothing left, your
20 Honor.

21 JUDGE MERZ: You were finished,
22 were you not?

23 MR. GREGER: Yes, your Honor. I
24 was, thank you. I call William Gallagher to the
25 stand.

1 JUDGE MERZ: Mr. Gallagher,
2 please.

3 WHEREUPON:

4 WILLIAM GALLAGHER,
5 of lawful age, a witness herein, being first duly
6 sworn testified as follows:

7 JUDGE MERZ: State your full name
8 and spell last name for the record.

9 THE WITNESS: William R.
10 Gallagher, G-A-L-L-A-G-H-E-R.

11 JUDGE MERZ: Your witness, Mr.
12 Greger.

13 DIRECT EXAMINATION

14 BY MR. GREGER:

15 Q. Mr. Gallagher, are you an attorney
16 licensed to practice in the state of Ohio?

17 A. Yes, sir.

18 Q. When were you first licensed?

19 A. In the state of Ohio in June of 1995.

20 Q. Have you been continuously licensed and
21 by that I mean has your licensed ever been
22 suspended, revoked for any reason since its
23 issuance?

24 A. No, sir.

25 Q. Mr. Gallagher, were you the attorney of

1 record in the case captioned United States of
2 America versus Steven Rennick, Senior?

3 A. Yes.

4 Q. Is that a criminal case before Judge
5 Dlott?

6 A. Yes, sir.

7 Q. Were you retained or appointed to
8 represent Rennick?

9 A. I was retained.

10 Q. What were the total fees paid to you by
11 Mr. Rennick for your representation?

12 A. I believe it was \$25,000.

13 Q. Total?

14 A. Well, there were expenses of a thousand
15 dollars he put into my alternative account for an
16 investigator. He reimbursed me for some mailing
17 expenses for the recovery of some court records
18 from Brooklyn or the Bronx, New York and accident
19 report in Arizona and some other records in New
20 Mexico. There was then a video deposition done of
21 a state employee from New Mexico that he had to pay
22 for but in terms of the representation or my fees,
23 I collected, I believe, it was \$25,000.

24 Q. Any portion of those fees paid in cash?

25 A. No, sir.

1 Q. Did you ever ask that any of the fees
2 be paid in cash?

3 A. No, sir.

4 Q. What was the largest single installment
5 of fees paid? Did you get the 25,000 in a lump
6 sum?

7 A. No, I did not.

8 Q. What was the largest single
9 installment?

10 A. I'm sorry, I don't recall at this
11 point.

12 Q. Did you provide receipts to Mr. Rennick
13 for his payments?

14 A. If he asked for them, I would have.
15 But at this point, I have no independent memory of
16 that.

17 Q. Did a portion of the fees paid to you
18 also pay for the fees of investigators?

19 A. I believe that was separate.

20 Q. How much was paid to the investigators?

21 A. I remember a check or requesting a
22 check for a thousand dollars be put in my ALTA
23 account to reimburse Mr. Dorning. I don't know if
24 there were any other fees or direct billing from
25 Mr. Dorning.

1 Q. What were the name or names of the
2 investigators that you hired to assist in the
3 Rennick case to trial?

4 A. Dorning, I'm not sure if he was
5 incorporated at that point. He was also known as
6 Precision Investigations.

7 Q. What did their investigation, his
8 investigation, show as to the strength or weakness
9 of the government's case as against Mr. Rennick?

10 A. Dale's involvement primarily was the
11 location and interview of some witnesses that I was
12 having some difficulty in contacting. So in terms
13 of what it exactly showed, I think that's a
14 difficult question to answer. But that's what I
15 had him do is locate and interview witnesses on my
16 behalf.

17 JUDGE MERZ: The record ought to
18 be clear at this point, I noticed that Mr.
19 Gallagher paused somewhat before answering that
20 question. You are aware, sir, in this proceeding
21 Mr. Rennick has claimed that you provided him with
22 constitutionally ineffective assistance of counsel.
23 By doing that he has waived any attorney/client
24 privilege with respect to your communications.

25 THE WITNESS: Yes, sir.

1 JUDGE MERZ: I'm assuming you
2 understood that but it's important to make it clear
3 for the record.

4 THE WITNESS: Yes, sir, thank you.

5 BY MR. GREGER:

6 Q. How many witnesses, did you know
7 whether or not Mr. Rennick or his family members
8 had taken witnesses down to the investigators or to
9 your office to be tape recorded and interviewed?

10 A. I met with a number of witnesses in my
11 office. I don't think any was in the company of
12 Mr. Dorning.

13 Q. Would you estimate that number of
14 witnesses to be eight or nine?

15 A. Not at one point but that's probably
16 true, about a fair number, yes, sir. I just want
17 to, Mr. Dorning for a while was a tenant. I own a
18 building in Cincinnati. Mr. Dorning and Precision
19 Investigators rented space from me. I don't know
20 if that was at the same time or not. That would
21 make sense if he was a tenant of mine at the time
22 he would see Mr. Dorning at that building.

23 Q. Did you ever share your opinions about
24 the strength or weakness of the government's case
25 with your client, Mr. Rennick?

1 A. Yes, sir.

2 Q. What did you tell him?

3 A. I think I gave him a frank review of
4 the case. I told him where I thought a lot of the
5 weaknesses for us or strength of the government
6 case were. They had witnesses who were cooperating
7 with them. Kareem Cole I was aware of who had a
8 number of other names. Mr. Davidson who I think
9 was also known as Mr. Jones, they were two
10 gentlemen from Jamaica who had been arrested and
11 cooperated and signed plea agreements and had
12 already pled.

13 There were statements that were
14 allegedly by Mr. Rennick or made to a regional
15 narcotics agent concerning the boxes that contained
16 marijuana. The marijuana were on premises that he
17 owned. They allegedly were in a truck that he
18 bought and owned. The witnesses had claimed that
19 he had transported that marijuana from the
20 southwest and then driven to Cincinnati and there
21 was corroboration of that fact. He was unable or
22 he would have been, I think, impeached had he
23 testified because he had some convictions. He had
24 some, there was, I think there was a notice of an
25 intent to use some additional fraud based behavior

1 by Mr. Rennick.

2 There was an allegation that he
3 staged a theft of a camper and filed a false
4 insurance claim on it. There was, I had been lead
5 to believe that Mr. Rennick outside of my knowledge
6 had been contacting witnesses and there was some
7 question as to what he had been saying to them and
8 whether or not they were statements that were going
9 to come back to court. I was unaware of those. I
10 don't get discovery of those in federal court, I
11 had a lot of concern.

12 At one point I got a letter from
13 Mr. Lawson directing me to tell Mr. Rennick to stop
14 talking to his client. There was times when
15 Rennick didn't want to follow the advice and was
16 talking to witnesses and I wasn't sure what they
17 were going to claim he said. Those were some of
18 the things that I thought were weaknesses.

19 Some of the strengths were, Mr.
20 Cole had a very checkered past. He had lied in
21 open court about who he was, he had an insurance
22 card he obtained in fraud. He had done a number of
23 things that I would have discredited him as
24 potential witness.

25 I think Mr. Jones, I uncovered a

1 lot of evidence that he could be discredited or his
2 truthfulness would be called into question. Mr.
3 Rennick, our defense had the fact that he had been
4 conned by Mr. Cole in believing Mr. Cole was a
5 legitimate businessman who was going to invest in
6 Mr. Rennick's race car, advertise on that race car.

7 I had proof that Mr. Cole
8 successfully conned other people. The president of
9 WCIN radio signed a contract with Cole with his
10 radio ads. Cole's company was called something in
11 the area of West African or Wild African Production
12 but it had done shows, I found a number of those
13 posters. Mr. Rennick helped me find some of the
14 posters. The president of WCIN and sales director
15 believed that Cole was a legitimate businessman.

16 Mr. Cole, we had one of the places
17 where a show had been sponsored by Mr. Cole and was
18 going to be called as a witness to say that he
19 signed a contract for a production and believed Mr.
20 Cole was a legitimate businessman. I wanted to be
21 able to argue to a jury that Rennick believed that
22 Cole was a legitimate businessman and we had proof
23 that what Mr. Rennick had been doing in trying to
24 get advertisers for his race car he had been
25 legitimately doing.

1 We had a contract, proposed
2 contract with Burger King where they were going to
3 do work with S and S Racing. Mr. Rennick and
4 Michelle Benjamin had visited with, I think it was
5 either anti-drug group or some group connected with
6 the federal government that was an anti-drug
7 education policy that considered advertising on
8 Rennick's cars. We had obtained two ESPN's sports
9 moments. Mr. Rennick gave me where ESPN
10 highlighted S and S Racing as up and coming team.
11 It was a legitimate enterprise.

12 There was no one that I was aware
13 that ever saw Mr. Rennick involved with Mr. Cole or
14 Mr. Davidson in that garage. We had some witnesses
15 who lived around that area that could testify to
16 that. We had, as I mentioned, a New Mexico state
17 trooper, it was like a customs official. It was my
18 understanding after the video deposition and before
19 that that tractor trailers going through the state
20 of New Mexico have to be stopped and inspected and
21 that would have been the case in Mr. Rennick's
22 case, and there was some question because all he
23 had was a tractor portion, there was no trailer.
24 That whether or not it would be treated as a
25 tractor.

1 It was registered as a camper and
2 that trooper remembered, therefore, a question of
3 how can a semi tractor be a camper and Mr. Rennick
4 explained to him without pulling the trailer and
5 other ways, I guess it could be. Mr. Rennick had
6 remembered that on his way back from New Mexico to
7 Cincinnati that there was another tractor trailer,
8 I think it hit an elk if I remember correctly, the
9 driver of that tractor trailer waiting for repairs
10 or police came over, had been in his, inside of his
11 tractor trailer and didn't see boxes and boxes of
12 marijuana, didn't smell marijuana as you would
13 expect hundreds of pounds of marijuana to smell.

14 So we had evidence and witnesses
15 prepared to testify concerning the defense. I
16 thought those were the strengths of our case.

17 Q. Did you ever undercover, did you ever
18 uncover evidence that Mr. Rennick had given Wayne
19 Benjamin a pound of marijuana?

20 A. No.

21 Q. Did you uncover evidence that Mr.
22 Elliott had conspired with Mr. Rennick, Senior to
23 distribute marijuana?

24 A. Directly, no.

25 Q. Were you present when Steven Rennick,

1 Junior, showed up at trial on the morning that
2 trial was to begin for purposes of being compelled
3 to testify and getting a grant of immunity?

4 A. Steve, Junior was represented by Rich
5 Goldberg. I was aware that Steve's case was going
6 to be dismissed and yes, he was there. I don't
7 remember that was the specific purpose. That may
8 have been related to Mr. Goldberg. At the time I
9 don't know that it was relayed to me that that was
10 the purpose.

11 Q. Did you understand that the New Mexico
12 Department of Transportation official who got into
13 that tractor for purposes of an inspection that was
14 on the trip where this 500 pounds of marijuana
15 allegedly was being transported back from Arizona
16 to the Southern District of Ohio?

17 A. That was my understanding, that was my
18 belief.

19 Q. And did you go out with Mr. Cohen and
20 take photographs of the fifth wheel on that
21 tractor?

22 A. Yes, sir.

23 Q. Was that fifth wheel in pristine
24 condition, didn't even have a mark on it?

25 A. That's what I believe our photographs

1 indicated, yes, sir.

2 Q. And Mr. Gallagher, did you form the
3 opinion that there could not have ever been a
4 trailer hooked up to that because of the pristine
5 condition of the fifth wheel?

6 A. Without knowing anything about trucks
7 that would have been my opinion, yes, sir.

8 Q. Had Mr. Rennick ever been stopped and
9 found in possession of marijuana, any quantity?

10 A. Not to my knowledge, no, sir.

11 Q. Was there a lease for the portion of
12 the premises upon which marijuana was found?

13 A. Yes, sir.

14 Q. At the College Hill warehouse?

15 A. Yes, sir.

16 Q. Was that portion of the warehouse a
17 locked portion of the warehouse?

18 A. You are testing my memory. I believe
19 it was, yeah, I remember things about keys and
20 padlocks, I'm sure exactly that's the case.

21 Q. Keys and padlock is what you remember?

22 A. You are testing my memory on all of
23 this. I know there was discussions about it. I
24 know it was locked and I can't remember if Steve,
25 Mr. Rennick, Senior had a key or not. But it was

1 definitely a locked area. I don't remember who had
2 access to it but at this point, yes, sir, I know it
3 was a locked facility.

4 Q. How did plea discussions -- strike
5 that. Did you discuss resolving Mr. Rennick's case
6 by way of a plea before the morning of trial?

7 A. Yes, sir.

8 Q. In what way?

9 A. Well, I know there were discussions at
10 some point with Mr. Brichler, who the United States
11 assigned to the case before trial. I know there
12 were discussions with my client. We had talked
13 about where he was in the guidelines in my belief
14 if he went to trial and lost. If he went to trial
15 or, as opposed to pleading, and the third would be
16 obviously a plea with what I believe to predict
17 what happened if he cooperated in some form or
18 fashion with the government.

19 The other thing that was going on
20 at the same time as I mentioned earlier there was
21 an allegation that Steve owned a camper that was
22 stolen, I think, in the state of Indiana or
23 reported stolen while another gentleman was driving
24 it. I had been lead to believe that by Brichler
25 there was an ongoing investigation into potential

1 insurance fraud. The insurance company had denied
2 the claim that had been filed.

3 Mr. Rennick hired a civil firm to
4 represent him on that claim. Mr. Brichler believed
5 he might be successful in obtaining an indictment
6 for fraud and that was a concern about whether to
7 go to trial and then seek to indict him for
8 insurance fraud or whether we get some sort of plea
9 arrangement where they decide not to indict him and
10 just take that. So, yeah, there were discussions
11 about that.

12 Q. Were you ever given a plea agreement
13 prior to the morning of trial?

14 A. I'm pretty sure. I, at some point I
15 was given one by Mr. Brichler, yes, sir.

16 Q. You believe you had a plea agreement
17 given to you prior to the morning of trial?

18 A. I believe as I sit here today that I
19 had at a some point before trial sent a copy of a
20 proposed plea agreement by Mr. Brichler to
21 consider, discussions to consider. That's what I
22 believe, yes, sir.

23 Q. And what count was contained in that
24 proposed plea agreement, what did your client have
25 to plead to?

1 A. I believe it was a conspiracy count to
2 distribute marijuana.

3 Q. Did you discuss that proposed plea
4 agreement with Mr. Rennick, Senior?

5 A. I believe I did, yes.

6 Q. Did he reject that proposed resolution?

7 A. Oh, yes, sir.

8 Q. Vehemently?

9 A. Steve wanted to go to trial.

10 Q. He was adamant about it?

11 A. I think that's fair.

12 Q. Mr. Elliott, likewise adamant about
13 going to trial?

14 A. I never had a discussion with Mr.
15 Elliott about going to trial before the day of
16 court, the day of trial.

17 Q. Until the day of trial or ever?

18 A. I have no, boy, I don't remember ever
19 talking to Mr. Elliott about whether he should go
20 to trial or not.

21 Q. Not whether he should or not, did you
22 ever hear Mr. Elliott express his desire, strong
23 desire to go to trial?

24 A. No. No, I don't believe I did.

25 Q. How far before the day of trial were

1 you provided with a proposed plea agreement from
2 Mr. Brichler?

3 A. I couldn't tell you.

4 Q. Was there a proposed statement of facts
5 that accompanied the proposed plea agreement?

6 A. That, I don't know.

7 Q. On the morning of trial when you showed
8 up, how did plea discussions occur?

9 A. We had, Judge Dlott at the time was in
10 a smaller courtroom and Judge Beckwith decided we
11 could use her courtroom because of the number of
12 defendants and the size. I beat the government
13 there, I thought that. And I know Mr. Brichler at
14 some point came up and sort of, why can't we work
15 this out fashion, and I know there were
16 discussions.

17 How they got initiated, I don't
18 remember exactly who initiated it or what, other
19 than that.

20 Q. Did Matthew Elliott ever speak to your
21 client Mr. Rennick, Senior on the morning that
22 trial was supposed to start for purposes of
23 discussing resolution of their cases by way of a
24 plea?

25 A. I believe they did.

1 Q. Did they do that privately?

2 A. I believe --

3 Q. Mr. Elliott and Mr. Rennick alone?

4 A. I believe they did.

5 Q. Did the offer from the government to
6 Mr. Elliott ever change that morning?

7 A. I believe it did.

8 Q. How many different offers did the
9 government make to Mr. Elliott that morning, if you
10 can recall?

11 A. I was not party to all conversations of
12 Mr. Lawson and Bob Brichler had. I know there was
13 at least one change. I know it went from something
14 related to the conspiracy eventually to what Mr.
15 Elliott pled which was the possession. How many
16 variations in between, I could not tell you because
17 I wasn't a party to those conversations.

18 Q. Were you ever party to a conversation
19 where the result, the sentence that was going to be
20 rendered was discussed?

21 A. I know Mr. Lawson was attempting to put
22 Mr. Elliott in a position where he could end up
23 with probation. That was Mr. Lawson's push to Bob
24 Brichler, that what he wanted for his client was
25 the potential for probation.

1 Q. Do you know whether or not Mr. Elliott
2 got any credit toward his sentence for the result
3 achieved that Mr. Rennick, Senior pled?

4 A. Let me see if I understand your
5 question correctly. Toward, on the day of trial,
6 getting credit on a reduction?

7 Q. Poorly phrased question.

8 A. Charged or sentencing?

9 Q. Let me try again. Were you part of a
10 discussion among one or more attorneys and/or one
11 or more defendants where Mr. Elliott was told that
12 if he could get Mr. Rennick to plead, he could get
13 the benefit of that by a 5K or reduced sentence?

14 A. No.

15 Q. You do not know whether or not that was
16 conveyed from Mr. Brichler to Lawson to Elliott, to
17 Rennick, Senior?

18 A. I was never party or aware of that
19 statement, no, sir.

20 Q. Were you ever aware that there was an
21 offer from the government that if Mr. Elliott could
22 get Mr. Rennick to plead, that Mr. Elliott could
23 get a downward departure?

24 A. No.

25 Q. Were you then surprised on the day of

1 sentencing when Mr. Elliott was, in fact, granted a
2 downward departure for his efforts at getting Mr.
3 Rennick to change his plea?

4 A. I was not present in the courtroom when
5 Mr. Elliott was sentenced. Mr. Rennick was first.
6 Mr. Elliott's sentencing hearing began when I was
7 there. There was a recess and I did not stick
8 around so I was not, until you just said that, if
9 that's the case, I was unaware of even as we sit
10 here today the reason for the downward departure.

11 Q. You were unaware even to today there
12 had been an agreement made, allegedly made, between
13 the government and Mr. Elliott that he would
14 benefit if he could get Mr. Rennick to plead?

15 A. If I could, I might be able to answer
16 the question this way. Maybe it will answer and if
17 it doesn't, I apologize. It was presented to me on
18 the day of trial that any plea agreement was going
19 to be entered into only if all three defendants
20 entered a plea. If one wanted to enter a plea, it
21 had to be to the conspiracy. There would be no
22 amendments of any charge unless all entered a plea.
23 Mr. Brichler did not want to go to trial. So the
24 reduction in sentence for Mr. Elliott or charge of
25 Mr. Elliott and Benjamin in essence was a result of

1 Mr. Rennick to enter a plea.

2 They would never in my mind gotten
3 the charge reduced if Mr. Rennick had not decided
4 to enter a plea. I don't know if that answers your
5 question. That's my understanding that day.

6 Q. Well, then at least the deal changed in
7 that regard because Mr. Benjamin didn't plead to
8 anything that was in the superseding indictment,
9 correct?

10 A. That's correct.

11 Q. And the deal changed as to Mr. Elliott
12 because he didn't have to plead to the conspiracy
13 count?

14 A. Correct.

15 Q. And the only person who had to plead to
16 the conspiracy count was Mr. Rennick?

17 A. That's correct.

18 Q. But you understood it was a package
19 deal?

20 A. I understood if anybody was going to
21 see a charge amended, it was only if all three had
22 decided to enter a plea, correct.

23 Q. Describe Mr. Elliott, did you get an
24 opportunity to view him on the morning of trial?

25 A. I'm sure I did. We were all present at

1 one time in the morning.

2 Q. Did you ever see him cry or --

3 A. I don't remember that.

4 Q. -- or be teary eyed or be weeping when
5 he spoke to Mr. Rennick.

6 A. I have no independent memory of that,
7 I'm sorry.

8 Q. Fair enough. When the discussions of
9 pleading started on the morning of August 18, 2003,
10 was the paperwork already prepared to effectuate
11 that plea?

12 A. I know things had to be changed. To
13 who exactly it had to be changed, I don't remember.
14 I know I, they filed information for Mr. Benjamin
15 but other than that I don't remember if all of the
16 paperwork was done or not, sir.

17 MR. GREGER: If I may have a
18 moment, your Honor.

19 JUDGE MERZ: Yes, sir.

20 MR. GREGER: Could the clerk hand
21 the witness Exhibit 6, please.

22 THE WITNESS: Thanks.

23 BY MR. GREGER:

24 Q. This is previously identified as the
25 plea agreement signed by Matthew Elliott that

1 resolved his case. Do you see in paragraph two
2 where the conspiracy count which was count one has
3 been changed?

4 A. Yes, sir.

5 Q. Do you see initials around that change?

6 A. Hang on just a second. Yes, sir.

7 Q. RCD, ME?

8 A. Yes, sir.

9 Q. Bob Brichler, Ken Lawson?

10 A. Right.

11 Q. Matthew Elliott?

12 A. Yes, sir.

13 Q. Count one was the conspiracy count?

14 A. Yes, sir.

15 Q. Count seven was the possession count
16 that Mr. Elliott ultimately pled to?

17 A. I believe you are correct.

18 Q. Is that an example of the changes that
19 had to be made in your recollection on the morning
20 of the pleas?

21 A. I just remember there were some
22 changes. Whether that was one of them or not, I
23 don't know. But I thought what had to happen, if
24 I'm remembering this correctly, nothing else,
25 somebody had to run back and produce an information

1 for Mr. Benjamin, I think.

2 Q. So the superseding information was
3 filed before Mr. Benjamin acted on it, that's your
4 recollection?

5 A. That's my recollection.

6 Q. Was there, in fact, a break taken so
7 that paperwork could be prepared before the pleas
8 were actually taken?

9 A. I believe that's the case.

10 Q. And did Mr. Benjamin, Mr. Elliott, and
11 Mr. Rennick then leave the court environment
12 approximately an hour and come back when the
13 paperwork was ready?

14 A. That sounds right.

15 Q. Were they immediately taken to the
16 podium when they re-entered the courtroom?

17 A. I don't know, I don't remember that.

18 Q. Do you recall the judge being on the
19 bench and ready to go and all three defendants
20 walked in and were immediately then put into the
21 plea process?

22 A. I have no independent memory of that.
23 I have no argument with that though.

24 Q. How long did Mr. Rennick, Senior have
25 to review the written plea agreement before the

1 plea colloquy started?

2 A. I believe Mr. Rennick's plea agreement
3 was no different than the one that we had
4 previously discussed and was no different than the
5 discussions that I really had with him about where
6 I thought he would be between plea and trial.

7 Q. Let's --

8 A. On the day of the trial, all I know is,
9 I couldn't give you an exact time. Whether it was
10 ten minutes or two hours and ten minutes, I was
11 satisfied that he understood the terms of it.

12 Q. Was Mr. Rennick picked up at some
13 location on the morning of trial, was he brought
14 from his home or someplace else?

15 A. I don't remember.

16 Q. Do you know if he was an inpatient at
17 VA hospital that day?

18 A. I don't remember.

19 Q. Do you know if he was on psychotropic
20 medications?

21 A. On that day I don't know.

22 Q. Were you provided with 380 pages of
23 medical records from family members that detailed
24 his psychiatric history?

25 A. Correct.

1 Q. Was any portion of those records the
2 medication regimen that he was on?

3 A. As I sit here today, I don't remember.

4 Q. Was there a typewritten statement of
5 facts that was given to Mr. Rennick to review for
6 its accuracy before the plea colloquy started?

7 A. Yes, sir.

8 Q. Why isn't that typewritten statement of
9 facts then filed with the plea agreement in the
10 court?

11 A. I don't know. I'm not responsible for
12 that.

13 Q. Did Mr. Rennick initial the written
14 statement of facts as being true and accurate
15 before it was then read into the record?

16 A. I have no independent memory of at
17 that, I'm sorry.

18 Q. Did you ever tell Mr. Rennick, Senior,
19 that Mr. Benjamin was going to plead by way of a
20 superseding information that Mr. Rennick had given
21 Mr. Benjamin a pound of marijuana on July 18, 2002?

22 A. I don't remember. I don't remember
23 telling Mr. Rennick that. I'm not saying I didn't
24 tell him that, I just don't remember that
25 conversation.

1 Q. What was Mr. Rennick's reaction when in
2 court the statement of facts was read that he had
3 given Mr. Benjamin a pound of marijuana on July 18,
4 2002?

5 A. If that's what was said, I remember
6 Steve being bothered by the fact that they were
7 pleading guilty to taking possession of marijuana
8 saying that they never took possession of
9 marijuana. I remember that part of it. I don't
10 remember about, in terms of him giving them
11 marijuana, our conversation about that but it was
12 his belief they never took possession of marijuana.

13 Q. Was his belief that he never provided a
14 pound of marijuana to Wayne Benjamin regardless of
15 the date chosen?

16 A. This is five years ago. Oh, man. You
17 know, I know he was bothered by what they were
18 plead to, yeah --

19 Q. Because it wasn't true?

20 A. I don't have the statement of facts in
21 front of me and the transcript and I'm trying to
22 remember all of the things that were bothering
23 Steve about those two. He had a lot of concern
24 about what was happening to Mr. Elliott and Mr.
25 Benjamin. His exact conversations about it, I'm

1 sorry, I remember, I'm trying to do the best I can
2 to tell you.

3 He was worried, truly, about what
4 was going to happen to Wayne and Mr. Elliott.

5 Q. Did you understand that he had a close
6 relationship, almost a father to son relationship
7 with Matthew Elliott?

8 A. Yes.

9 Q. Did you understand that he almost had a
10 father, son relationship with Mr. Benjamin?

11 A. They were close. That was my
12 understanding, it was close.

13 Q. How many times did Mr. Elliott
14 privately speak with Mr. Rennick, Senior on the
15 morning that the pleas occurred?

16 A. I remember one for sure. If there were
17 more I can't tell you. But I know there was at
18 least one.

19 Q. Did Mr. Elliott get permission to talk
20 to Rennick, Senior?

21 A. It was either Elliott or Lawson. But,
22 yes, they wanted to have a conversation amongst the
23 three of them, yes, sir.

24 Q. And what was the purpose, as you
25 understood it, of that conversation?

1 A. It was because it was being discussed
2 that this was sort of, as I call it, the three
3 musketeers. It was all for one and one for all.
4 In the minds of the government we were either going
5 to have a trial or a plea. If it was a plea, it
6 was going to be all three and I think the
7 discussion was going to be, which was, what was in
8 the best interest of everyone and I think they
9 wanted to because of their closeness to be
10 comfortable with the decision that all three were
11 making.

12 Q. And did you ever understand that Mr.
13 Rennick was comfortable with what Mr. Benjamin and
14 Mr. Elliott had agreement to do?

15 A. He wanted to see them in a position
16 where they weren't incarcerated.

17 Q. Do you know whether or not Mr. Benjamin
18 and/or Mr. Elliott told Mr. Rennick, Senior, that
19 they would, in fact, get probation if all three of
20 them pled as an incentive to insure Mr. Rennick,
21 Senior that they would, in fact, not be harmed by
22 the pleas?

23 A. That, no.

24 Q. Do you know if that occurred?

25 A. I can't tell you that didn't occur but

1 you are asking me if I was told that, no, I was
2 not.

3 Q. So it's your belief that Mr. Rennick,
4 Senior, was shown a typewritten statement of facts
5 that said he conspired with others to import in
6 excess of a hundred kilograms of marijuana from
7 Arizona to the Southern District of Ohio?

8 A. Yes, sir.

9 Q. And that Mr. Rennick was not agitated
10 over those facts?

11 A. Would it be fair to say that Mr.
12 Rennick wasn't calm during any point during that
13 day? I don't have an independent memory those
14 facts were unusually bothersome to him. I guess
15 it's hard in representing a lot of defendants, when
16 they come to court they are thinking trial and now
17 in a position of entering a plea to say they were
18 not agitated about the concept of doing that.

19 Mr. Rennick, up until that point
20 had never confided in me. He believed he was
21 guilty or being found guilty of this. He was
22 admitting something new in terms of both of us. In
23 the discussion he never said, Bill, I took this
24 marijuana from Arizona to Cincinnati so I'll gladly
25 plea. This was when presented with the statement

1 of facts in the plea agreement, in essence he was
2 admitting to new information to me if that makes
3 sense.

4 Q. Mr. Rennick had never told you in your
5 investigation and defense of him in this case that
6 he had, in fact, transported any marijuana from
7 Arizona to the Southern District of Ohio?

8 A. That's correct.

9 Q. Mr. Rennick had never told you in your
10 representation of him that he had provided any
11 marijuana, a pound, an ounce, a tenth of a gram to
12 Wayne Benjamin, ever?

13 A. I can't say I agree with that. I don't
14 have any memory of him making a statement in the
15 negative like that that I have never ever smoke
16 with him or given to him.

17 Q. He wouldn't have said that before the
18 morning of trial because that set of facts was
19 invented on the morning of the pleas, correct?

20 A. I don't know about it. I don't
21 necessarily think it was invented. There was
22 discussions about smoking marijuana, generally, and
23 I don't remember, I'm trying to remember who people
24 said were smoking marijuana and access to it and I
25 don't have any memory of who that was. I'm having

1 a hard time saying I would agree with it that he
2 never gave -- I don't know there was a discussion,
3 hey, we smoked together or not. I can't say that
4 was ever said.

5 On the invention of whether or not
6 someone gave someone marijuana for purposes of
7 Wayne Benjamin, I wasn't party to a discussion
8 about what facts would be necessary to support a
9 plea for Wayne Benjamin or for Matt Elliott. I was
10 only concerned with my client at that point in time
11 and what facts were necessary that he would have to
12 agree to or accept as being true.

13 Q. So tell me what you understood your
14 client had to accept as being true to facilitate
15 his plea.

16 A. Was conspiring with others to bring
17 marijuana in excess of the statutory amount from
18 Arizona to Cincinnati, I believe.

19 Q. And who were those others as you
20 understood it?

21 A. I can't remember if it was named in the
22 statement of facts or not. But I think it was
23 relatively clear that no one else, it was at least
24 Mr. Cole and Mr. Davidson.

25 Q. And you had every reason to believe

1 that the two Jamaicans were liars?

2 A. Well, no, I didn't say, I think I had a
3 lot of information to show that they were
4 definitely liars. About this fact, I don't know.
5 I think I had a lot of information to show they
6 were liars, yes, sir.

7 Q. Did you ever conclude yourself that the
8 Jamaicans were liars?

9 A. Yeah, about many, many things, yes,
10 sir.

11 Q. Did you understand that the government
12 intended to call Mr. Cole and Mr. Davidson?

13 A. It was certainly my hope it was going
14 to be a trial that those two were there as opposed
15 to other people, yes, sir.

16 Q. Who else could have possibly supported
17 the theory of conspiracy for the government?

18 A. Because of the rules of discovery, I
19 don't know unless we have a trial. I was unaware
20 of any others. Mr. Rennick and I had a lot of
21 discussions about what other people, but I was
22 unaware of anyone else.

23 Q. Mr. Rennick entered his plea before
24 Judge Dlott on August 18, 2003?

25 A. That sounds right.

1 Q. Were the federal sentencing guidelines
2 still mandatory at that point?

3 A. Yes, sir.

4 Q. Booker was not cited by the Supreme
5 Court until 2005, am I correct?

6 A. I think you are right.

7 Q. Even now under the advisory guidelines
8 what is your experience with the federal judges in
9 Cincinnati as it relates to deviations from the
10 advisory guideline sentences?

11 A. I've had some success. I think that
12 they are open to following that in appropriate
13 circumstances.

14 Q. Did you tell Mr. Rennick, Senior how he
15 could get a sentence of less than five years?

16 A. Yes, sir.

17 Q. What did you tell him?

18 A. Told him it required the government to
19 file a 5K most likely and to, there was discussion
20 that day by cooperating with the regional narcotics
21 unit.

22 Q. John Mercado a member of that RENU
23 unit?

24 A. Yes, sir.

25 Q. Do you know whether or not your client

1 Mr. Rennick ever met with Mr. Mercado for purposes
2 of forming an alliance to start down the road
3 toward substantial assistance?

4 A. Yes, sir.

5 Q. Did you go with him?

6 A. No, sir.

7 Q. Why not?

8 A. He was, I go with my client when they
9 are being debriefed about their activities or
10 offering proffers. It was my understanding what
11 Mr. Mercado wanted to or Agent Mercado wanted to do
12 is to have Mr. Rennick to understand the rules of
13 being a cooperative individual and what was
14 expected of him in terms of abiding by the laws and
15 keeping in contract, trading in information and
16 contact information and a general, sort of outline
17 what Mr. Rennick might be able to do for them. I
18 didn't think it was necessary for me to be there
19 for that.

20 Q. Am I correct that the terms of
21 substantial assistance are engaged under contract
22 terms you do this and in consideration of you doing
23 this we are going to do that?

24 A. I would agree with that, but
25 unfortunately federal law sort of allows the

1 government the discretion whether they are going to
2 file one, a 5K. In essence it should be that way
3 and generally that's the way it's presented, yes,
4 sir.

5 Q. So you did not deem it necessary to go
6 and understand what the terms of the contract was
7 going to be between Agent Mercado and your client?

8 A. It doesn't quite work that way because
9 what is going to occur is Agent Mercado is going to
10 report to Mr. Brichler his satisfaction or
11 dissatisfaction with Mr. Rennick and Mr. Brichler
12 is going to make the determination whether he deems
13 it to be substantial assistance.

14 I stayed in contact with Mr.
15 Rennick and we had lots of discussions about the
16 level of his cooperation and he was concerned and
17 asked about whether what he was attempting to do
18 could be deemed substantial and would be viewed
19 favorably by the government. So, no, I didn't
20 think it was necessary to go to Agent Mercado to
21 see what the terms were. I didn't think he was the
22 ultimate decider. I thought it was Brichler.

23 Q. How were you going to be able to engage
24 whether or not your client met the terms set out by
25 Agent Mercado for purposes of qualifying for

1 substantial assistance?

2 A. One is the experience I've had with Mr.
3 Brichler as well as RENU and what they were
4 interested in. Two, was informal general
5 discussions with Agent Mercado and Mr. Brichler on
6 the day of sentencing because that's the first day
7 that cooperation came up and they were looking for
8 substantial amount of marijuana to be brought into
9 Cincinnati because they thought Mr. Rennick was
10 part of a group of people that had connections with
11 people in southwest United States to bring them in.

12 They were also interested in
13 anyone else they thought, he thought, I'm sorry,
14 that they were interested in anyone Mr. Rennick
15 could identify locally that was a distributor or a
16 receiver of large amounts of marijuana.

17 Q. And who, I'm sorry?

18 A. I understood that's what he was going
19 to have to try to do.

20 Q. Who did Rennick identify as a local
21 supplier in Cincinnati?

22 A. Mr. Rennick told me that he didn't know
23 anyone locally at that point but he thought he
24 might be able to get someone outside of Cincinnati,
25 possibly.

1 Q. Were they talking about 1,500 pounds of
2 marijuana?

3 A. Initially no one specifically talked
4 about any necessary amount in order to determine
5 substantial assistance.

6 Q. How then were you going to determine
7 whether or not your client had met the threshold to
8 qualify?

9 A. Because I've never had a threshold with
10 any of the U.S. attorneys there. It's really sort
11 of been, I'm sorry, it's a vague sort of situation
12 down there. It's a case by case whether they think
13 there is substantial assistance. I seen very small
14 amount based on effort and I've seen it very large
15 amount. I told Mr. Rennick that I thought he was
16 going to have to find a substantial amount of
17 marijuana and I characterize that to be more than
18 what he was accused of being transporting from
19 Arizona to Cincinnati on the date that the agent
20 raided that garage.

21 Q. Did you ever consult with Mr. Rennick's
22 treating physicians at the VA?

23 A. I've been in contact with people at the
24 VA. I wouldn't determine it a consult. I've been
25 in contact with some folks there and had records.

1 Q. Were you notified on the pleas that the
2 government intended to use 404B evidence?

3 A. I was aware of the 404B evidence. What
4 day I was told I couldn't tell.

5 Q. Is the evidence, the 404B evidence was
6 that Rennick paid witnesses to testify falsely?

7 A. Yes, sir.

8 Q. And was Duke Ball one of those people
9 who allegedly had been paid to falsely testify?

10 A. You know, I don't know. Mr. Brichler
11 wouldn't tell me the people that he was going to
12 call that day.

13 Q. Were you ever shown two \$6,000 checks
14 by the government to then show you evidence or
15 proof of what the 404B evidence was about?

16 A. I don't remember that, I'm sorry.

17 Q. Did you ever inquire to Mr. Brichler
18 what the 404 evidence was so that you could then
19 prepare your client for that evidence coming in
20 and/or to prepare to rebut it?

21 A. I apologize, I don't remember the
22 timing of the discussions about the 404B whether it
23 was that day or days before.

24 Q. Did you prepare a sentencing memoranda
25 for the court's use at sentencing?

1 A. Yes, sir.

2 Q. Did you mention in that sentencing
3 memoranda any of the psychological background of
4 the client Mr. Rennick, Senior?

5 A. I believe I did.

6 Q. Mr. Gallagher, would you agree that one
7 of the rules of counsel in resolving a criminal
8 case by way of a plea is to provide the defendant
9 accurate factual picture as possible so that client
10 can assess whether to proceed to trial or accept a
11 plea agreement?

12 A. I would agree with you.

13 Q. Going to trial usually costs the
14 defendant his acceptance of responsibility and
15 timely notification of a plea reduction under the
16 advisory guidelines, doesn't it?

17 A. Yes, sir.

18 Q. So there is a real cost based on the
19 then mandatory guidelines, now advisory guidelines
20 of going to trial unless the result is an
21 acquittal, correct?

22 A. There can be, yes, sir.

23 Q. The application notes to the sentencing
24 guidelines provide the defendant can still receive
25 his acceptance of responsibility reductions if he

1 goes to trial to protect a constitutional right,
2 correct?

3 A. Correct.

4 Q. Were there any constitutional issues
5 that had been argued pretrial that needed to be
6 protected by going to trial?

7 A. No, sir.

8 Q. Was there ever any motion to suppress
9 any evidence filed in this matter?

10 A. No, sir.

11 Q. Did the government ever tell you that
12 they had evidence that Mr. Rennick was in
13 possession of marijuana? They had a witness who
14 was going to place him in direct contact with
15 marijuana?

16 A. They never told me about evidence of
17 that sort, no, sir.

18 Q. Mr. Gallagher, did you ever attempt to
19 separate Elliott and Benjamin's cases from
20 Rennick's?

21 A. No, sir.

22 Q. When did you learn for the first time
23 that Elliott and Benjamin wanted to resolve their
24 cases by way of plea?

25 A. Day of trial.

1 Q. And is it, were their deals contingent
2 on Rennick's plea because if the government is
3 going to go to trial and prove a conspiracy, it's
4 just as easy to go to trial to prove it as to one
5 as it is three?

6 A. I would agree with that.

7 Q. Why did you give consent for Elliott to
8 speak directly to Rennick about resolving their
9 cases?

10 A. They were very, very close. Steve was
11 concerned about their welfare and what was going to
12 happen to them and he didn't seem to mind about
13 finding out what their feelings were about how,
14 whether they wanted to proceed to trial or not. I
15 didn't think it was right to shield him from the
16 people that he was concerned about.

17 Q. Were you present for the discussion
18 between, any of the discussions between Elliott and
19 Rennick?

20 A. No, sir.

21 Q. Describe Mr. Rennick's emotional state
22 after the pleas were accepted.

23 A. He wasn't relieved, I'll tell you that.
24 I'm trying to put a good word to it.

25 Q. Was he irate?

1 A. I don't think he was irate.

2 Q. Was he agitated?

3 A. I'd agree with that.

4 Q. Was he upset?

5 A. He was not happy.

6 Q. Was he angry?

7 A. I wouldn't go that far.

8 Q. Was there a confrontation among all
9 three defendants and three counsel outside of the
10 courtroom in the hallway after th pleas?

11 A. I don't remember that ever happening,
12 no, sir, I'm sorry.

13 Q. Have you ever used the term legal
14 fiction to describe what occurred on August 18,
15 2003?

16 A. I don't believe so.

17 Q. Did you ever use the term legal --
18 strike that.

19 Fictional plea to describe what
20 occurred on August 18, 2003?

21 A. Fictional plea? No, sir.

22 Q. Have you ever used the term fiction in
23 any of its forms to describe --

24 A. As it relates to this case?

25 Q. Yes.

1 A. As it relates to Steve, no. As it
2 relates to Wayne Benjamin, I can't say no in terms
3 of questions about what Wayne and Mr. Elliott had
4 to admit to, I was being told did not occur. I
5 have no independent knowledge whether that's true
6 or not. But I know Mr. Rennick was concerned
7 about, they didn't do what they were pleading to,
8 why are they pleading to it?

9 Q. Did anybody besides Mr. Rennick,
10 Senior, tell you that what Benjamin and Elliott
11 were pleading to they did not do?

12 A. No.

13 Q. Did you have a discussion with Mr.
14 Cohen that morning about the facts that his client
15 was going to admit to that harmed your client?

16 A. I don't believe so, no.

17 Q. When did you know for the first time
18 that Mr. Benjamin was going to plead to receiving a
19 pound of marijuana from Mr. Rennick on July 19, 18,
20 2002?

21 A. After Mr. Rennick told me that he was
22 going to enter the plea. That's when I found out
23 it was after that, sometime after, whether it was
24 immediately or when they prepared the documents or
25 went back and got the bill of information from Mr.

1 Benjamin, I found out. Because nothing was going
2 to happen unless Mr. Rennick was also going to do
3 it. I wasn't pushing a plea. The other two were
4 pushing trying to work out their case.

5 Q. Mr. Elliott's attorney, Mr. Lawson, and
6 Mr. Benjamin's attorney, Mr. Cohen, were push to
7 work their cases out?

8 A. I would agree with that.

9 Q. And their cases could not be worked out
10 unless Mr. Rennick likewise pled?

11 A. You are correct.

12 Q. Did you have input to the statement of
13 facts that Mr. Rennick ultimately pled to?

14 A. I don't remember if we accepted them as
15 drafted by the government or whether we had asked
16 for corrections or amendments to it. I don't
17 remember doing that. It may or may not have
18 occurred.

19 Q. Both Elliott -- strike that. When did
20 you learn that what Mr. Benjamin was pleading to
21 was false or invented or fictional?

22 A. I don't know if I ever came to that
23 conclusion. I remember being told by Mr. Rennick
24 that what we were pleading to --

25 Q. Never occurred?

1 A. -- never occurred in his mind, that's
2 correct.

3 Q. Did you --

4 JUDGE MERZ: What did you
5 understand Wayne Benjamin was pleading to?

6 THE WITNESS: I think it was
7 taking possession. I'm trying to remember. It was
8 five years ago, I wasn't concerned about them. I
9 think it was taking possession of a pound of
10 marijuana. At some point, I don't remember the
11 dates that he was alleged to have taken the pound
12 or all of the circumstances, but I believe he was
13 taking possession.

14 JUDGE MERZ: Go ahead, sir.

15 BY MR. GREGER:

16 Q. Directly from Mr. Rennick?

17 A. That sounds right but it's kind of hard
18 to say. I don't remember. I wasn't really
19 concerned about those two, I was concerned about
20 Steve.

21 Q. Did you hear the statement of facts
22 read into the record by Mr. Brichler to support
23 Benjamin's plea?

24 A. I was there.

25 Q. Did you know from your investigation

1 that that could not have occurred on the date that
2 was read into the record because Mr. Benjamin and
3 Mr. Rennick, Senior were not even in the state of
4 Ohio?

5 A. I'm sure I was aware of all of the
6 dates back then. I'm not aware of the dates now.
7 I can't answer that question, I don't remember.

8 Q. Do you know why Elliott was used to
9 sell the plea package and not Mr. Benjamin?

10 A. I don't remember anybody having to sell
11 anything. I wasn't party with the conversation
12 with Mr. Elliott and Mr. Benjamin and Mr. Rennick.
13 I don't know anything about a selling of a plea.

14 Q. Let me ask you whether Mr. Benjamin's
15 attorneys approached you, attorney approached you
16 for permission to have Mr. Rennick, Senior and
17 Wayne Benjamin speak privately?

18 A. I don't remember that happening.

19 Q. Only Mr. Elliott's counsel asked for
20 that permission?

21 A. I guess I should, I'm not saying it
22 didn't happen. I don't remember that happening.

23 Q. Did you bring any objections to the
24 attention of the court at the time of sentencing
25 that were contained in the pre-sentence

1 investigation report?

2 A. I reviewed it with Steve, I know that.
3 I just don't remember if we made objections or not.

4 Q. Where did you review it at?

5 A. My office.

6 Q. When? Or, I don't expect a date at
7 this point, Mr. Gallagher, how far in advance of
8 sentencing did you review the pre-sentence report?

9 A. We reviewed the initial because if
10 there were objections due I review them always with
11 my clients before the date due back before the
12 probation, the final date of the probation report
13 is done. Steve's sentencing was delayed for a
14 while. Steve got hurt, Steve was incapacitated in
15 a hospital both before the plea for a while as well
16 as at the time of sentencing.

17 It is possible, I'm trying to
18 remember or not, whether it was in our office or
19 whether we had to correspond by mail. I don't
20 remember.

21 Q. Why was Mr. Rennick, Senior
22 hospitalized before the plea?

23 A. Before the plea Steve got hospitalized
24 for a period of time after he got out on bond. He
25 was not, he was having some mental health issues

1 and went into the hospital for a period of time. I
2 can't remember how long. I remember he went into
3 the hospital for a period of time.

4 Q. VA?

5 A. Yes, sir.

6 Q. Did you know what medications Mr.
7 Rennick was on on the morning of his plea?

8 A. I'm sure I did at the time. I couldn't
9 recall them to you now.

10 Q. You told the court that in your opinion
11 none of those medications affected his ability to
12 know what he was doing that morning; is that true?

13 A. That would be true.

14 Q. How did you determine that?

15 A. My conversations with Steve were always
16 relatively consistent in nature. He always seemed
17 to understand what I was talking to him about. His
18 responses and his questions of me were appropriate
19 in all settings. I saw nothing about his demeanor,
20 manner of speech, or anything that was different in
21 the times that I'd seen him before, other than
22 obviously being nervous and somewhat agitated on
23 the day of trial which was typical, I think, for
24 any client facing what he was facing.

25 Q. Did you charge Mr. Rennick any

1 differently because you were going to go to trial
2 than if it had been a plea?

3 A. I don't think at that time I was
4 charging, I'm positive I wasn't charging per diem
5 for days of trial or difference between plea and
6 trial, no, sir.

7 Q. I know this is a little off beat. Have
8 you and your family ever been out to Colorado?

9 A. I've been, I've been out there with my
10 wife but not my kids.

11 Q. You and your wife have been to
12 Colorado?

13 A. Yeah.

14 Q. What did you understand the basis for
15 Mr. Rennick's diagnosis of PTSD was?

16 A. He was injured while serving in Vietnam
17 and was still having issues dealing with that,
18 mentally.

19 Q. Flashbacks?

20 A. Yes, sir.

21 Q. Nightmares?

22 A. Yes, sir.

23 Q. He had to actually shoot one of his
24 buddies because the buddy had caught on fire and
25 his face was melting, did you know that?

1 A. That sounds exactly, that sounds very,
2 very familiar. I'm going to apologize, I have
3 three Vietnam vet clients that had bad experiences.

4 Q. He was also charged with vehicular
5 homicide because of a truck went over the edge, the
6 man was killed when he was trying to teach him to
7 drive?

8 A. Yes, sir.

9 Q. He was found guilty of that death,
10 didn't he?

11 A. He only had the conviction for the
12 tractor theft, you are right.

13 Q. Did you ever have to get continuances
14 on courts dates based on Mr. Rennick's
15 psychological treatments?

16 A. I believe we did have to delay the
17 trial as a result of him being hospitalized.

18 Q. Why did you file a motion for a
19 downward departure?

20 A. I believe the circumstances warranted
21 one that I could argue hopefully effectively for
22 Judge Dlott to go downward.

23 Q. What circumstances warranted the filing
24 of your motion for a downward departure?

25 A. I believe based on Mr. Rennick's

1 service to his country, I believe based on his
2 mental health status, that I would characterize
3 being somewhat fragile that he attempted to assist
4 himself by working with the government in
5 attracting drug dealers to bring narcotics to
6 Cincinnati, and it was my understanding based on
7 what Mr. Rennick told me that he was shot during
8 the course of his attempting to assist himself with
9 the government. That warranted an unusual
10 circumstance where Judge Dlott could feel justified
11 in departing below the guidelines.

12 Q. She was statutorily bound, wasn't she?

13 A. To follow the guidelines?

14 Q. To impose a mandatory minimum sentence?

15 A. I think she can depart below that in
16 unusual circumstances and I think there was an
17 argument in an attempt to do so.

18 Q. It was your belief that Judge Dlott
19 could depart below a statutorily mandated minimum
20 mandatory sentence by your filing of a motion for a
21 downward departure, is that what you said?

22 A. I got it, that's what I said. I guess
23 I should correct that. I'm trying to remember
24 where we were in the guidelines or where I was
25 trying to get him down a level. We were trying to

1 go down from what the sentence was from probation
2 because of that.

3 Q. Were there any discussions about what
4 sentences could be given to Mr. Rennick before he
5 entered his plea --

6 A. Yes.

7 Q. -- that you were participating in?

8 A. Yes.

9 Q. What were the months that were
10 discussed Mr. Rennick could get if he pled?

11 A. If he entered the plea he was facing a
12 mandatory minimum of five years. If he cooperated
13 with the government and they were satisfied to the
14 point where they wanted to file a 5K, historically
15 speaking in Cincinnati in the Southern District you
16 normally saw a 5K motion of approximately
17 30 percent of a reduction from where the guideline
18 proposal was from the probation department.

19 I think that we were probably in
20 the area of about 42 months. Three, to three and a
21 half years with assistance.

22 Q. 36 months?

23 A. That would be, that would be about
24 right, I think.

25 Q. Did you mention that 36 months to Mr.

1 Rennick before he pled?

2 A. There was discussions about pleas and
3 where he might be if he cooperated so I'm sure we
4 did. I know we talked about what assistance would
5 normally mean to somebody.

6 Q. And did you tell Mr. Rennick before he
7 pled, now, Steve, you've got to understand that
8 this is a shot in the dark. The government either
9 files the motion or they don't and I don't really
10 have a whole heck of a lot of control over it?

11 A. I don't think I would have said a shot
12 in the dark. I don't have any control over the
13 government filing one. I know I would have told
14 him that. It's in the plea agreement, normally.

15 Q. If the government's assertion under
16 404B was correct, how could Mr. Rennick avoid the
17 assignment of two points for obstruction of
18 justice?

19 A. Well, it would depend on the government
20 whether or not they wanted to present that
21 information to probation and many times they choose
22 not to.

23 Q. But Mr. Brichler had actually filed his
24 notice to use 404B in the docket of the court,
25 hadn't he?

1 A. I can't remember if Mr. Brichler filed
2 it or just informed me of it. I can't say for
3 sure, but I was aware of it.

4 Q. Did you listen to the tapes that Mr.
5 Rennick provided surrounding his substantial
6 assistance?

7 A. Yes, sir.

8 Q. Did you have them transcribed?

9 A. No, sir.

10 Q. Did you put them before the court?

11 A. No, sir.

12 Q. Did you call Agent Mercado to back up
13 your assertion that this was a case where she
14 should depart downward because of the extraordinary
15 efforts of your client?

16 A. On behalf of law enforcement?

17 Q. Did you have an opportunity to call
18 Agent Mercado to the stand for an evidentiary
19 hearing in support of your motion for a downward
20 departure?

21 A. He was available. I could have called
22 him, yes, sir.

23 Q. Did you?

24 A. No, sir.

25 Q. You listened to the tapes but you

1 didn't put any of that evidence before the court?

2 A. Correct.

3 Q. In your downward departure motion?

4 A. That's correct.

5 Q. Did you have evidence that, in fact,
6 Mr. Rennick set up the shooting, found somebody,
7 hired somebody to shoot him?

8 A. No.

9 Q. What was the down side, Mr. Gallagher,
10 in calling Agent Mercado to the stand since the
11 government had already refused to file the motion
12 for substantial assistance?

13 A. Agent Mercado, I think, would have
14 characterized Mr. Rennick in an extremely bad light
15 in front of Judge Dlott as a manipulator, as a
16 liar, as uncooperative. He had stopped and talked
17 to me many times and I did not see any upside. I
18 only saw a down side to Agent Mercado to being
19 allowed without the bounds of the rules of evidence
20 to testify.

21 Q. The then mandatory guidelines called
22 for a sentence of 60 to 63 months, did it not?

23 A. He was facing a five-year mandatory
24 minimum, you are correct.

25 Q. So the floor was 60 months and based

1 upon the readily provable amount that the
2 government had, his ceiling was 63 months, correct?

3 A. I'll accept what you are saying is
4 true. I can't remember exactly where we were.

5 Q. And the judge gave him the ceiling,
6 63 months, did she not?

7 A. She gave him 63 months. If that was
8 the ceiling, I know she gave him 63 months. I
9 can't remember what the ceiling was at the time.

10 Q. So even if Agent Mercado done what you
11 feared he might do, there was no down side because
12 he actually got the maximum mandatory sentencing
13 guidelines as his sentence, correct?

14 A. In hindsight if that's what the ceiling
15 was, you would be correct.

16 Q. Well, had you calculated what your
17 client's guideline range was so that you could
18 determine what the floor and the ceiling were?

19 A. Yes, sir.

20 Q. And so there is a three months
21 difference between the floor and the ceiling; is
22 that true? Assuming that my representations to you
23 are correct?

24 A. You would be correct, yes, sir.

25 MR. GREGER: Where are we?

1 JUDGE MERZ: We are at 5 o'clock
2 is where we are.

3 MR. GREGER: We are rounding home
4 is where we are.

5 BY MR. GREGER:

6 Q. Handing you what's marked for
7 identification as Rennick's Exhibit 14 for this
8 hearing, what is that?

9 A. It appears to be the plea agreement
10 that was signed and filed in this case.

11 Q. So that's the plea agreement that Mr.
12 Rennick entered into on August 18, 2003?

13 A. Excuse me, I'm sorry.

14 Q. That was --

15 A. I didn't hear the whole question.

16 Q. That was the plea agreement that Mr.
17 Rennick entered into on August 18, 2003?

18 A. What you've handed me doesn't have
19 anyone else's signature on it but mine and it's
20 dated October, I don't know if this is what was
21 filed or not.

22 Q. It's not a plea to a drug count at all,
23 is it?

24 A. Let me take a look. It's a mail fraud
25 count, I'm sorry.

1 Q. It's a mail fraud count. How did you
2 get this plea agreement two months after Mr.
3 Rennick had already entered his plea and as part of
4 the bargain the government would not prosecute him
5 for any other charges?

6 A. Couple of questions in that one
7 sentence.

8 Q. Sorry.

9 A. It's okay.

10 Q. How did you get the plea agreement
11 that's marked as Exhibit 14?

12 A. I don't remember, I would assume I
13 would have gotten it from Mr. Brichler.

14 Q. Mr. Rennick ever charged with a
15 violation of 18 U.S.C. Section 1341 to your
16 knowledge?

17 A. Not to my knowledge.

18 Q. Whose signature appears on the plea
19 agreement?

20 A. That's my signature.

21 Q. What date did you sign it?

22 A. It says October of '03. That's when I
23 did it, I guess.

24 Q. When did you present this plea
25 agreement to Mr. Rennick?

1 A. I don't remember. I have no memory of
2 this, I apologize.

3 Q. Is Steven M. Rennick, Senior the same
4 person that you represented in the other cases?

5 A. Yes, sir, it is.

6 Q. What was the \$770,000 intended loss
7 that you were greeted with by affixing your
8 signature to the plea agreement?

9 A. I believe that probably would have been
10 the value of the camper if that's what this relates
11 to.

12 Q. Mr. Rennick had a \$770,000 camper?

13 A. I tried to remember. I think -- I'm
14 sorry, I'm trying to remember all of the facts and
15 circumstances. I honestly, Judge, I just don't
16 remember all of them.

17 Q. Why would you sign another plea
18 agreement for your client Steven M. Rennick, Senior
19 when part of the plea bargain that he entered into
20 was that he would not be prosecuted for any other
21 crimes in the Southern District of Ohio?

22 A. I don't think I ever said that was part
23 of the agreement on it. I said we discussed a
24 potential of it. I don't think we ever got -- I
25 had talked to Steve about a potential and with

1 Brichler about it. I don't think we got a full
2 agreement not to do that.

3 Q. So when Mr. Rennick, Senior entered his
4 plea to the conspiracy count it was not a
5 protection from prosecution for any other crime.
6 The government knew about that which was committed
7 in the Southern District of Ohio?

8 A. I said I don't remember if it was or
9 not. I don't know, Mr. Greger, I don't know.

10 Q. Would you allow a plea that didn't
11 protect your client from the other offenses that
12 the government knew about?

13 A. If I could prevent it, I would.

14 Q. So did you tell Mr. Rennick, Mr.
15 Rennick, listen, you are going to plead to this
16 conspiracy count but if the government got fraud
17 count for the camper or a mail count or anything
18 else they got, I can't protect you from that by
19 pleading?

20 A. If that were the case, I would have
21 told him that.

22 Q. Did you ask Mr. Brichler why he didn't
23 join all of the offenses that he knew about in the
24 superseding indictment?

25 A. I don't remember having a conversation

1 about that specifically.

2 Q. Now, it says in Exhibit 14 that the
3 defendant will at the time he enters his plea of
4 guilty acknowledge the truth of the attached
5 statement of facts of paragraph 12. Did I read
6 that correctly?

7 A. Yes, sir.

8 Q. Is there an attached statement of
9 facts?

10 A. The document that you gave me, no, sir.

11 Q. What were the attached statement of
12 facts that you might have seen to enable you to go
13 ahead and sign this plea agreement?

14 A. I don't know.

15 Q. When did you discuss this plea
16 agreement with Mr. Rennick?

17 A. I don't know.

18 Q. What did Mr. Rennick do that you, by
19 affixing your signature to, was acknowledging he
20 would plead to?

21 A. I think I'd have to see the statement
22 of facts exactly. I'm having, sorry, I'm having a
23 very hard time remembering the circumstances of
24 this document and what lead up to its execution by
25 me.

1 Q. Would you have signed this plea
2 agreement without knowing what the statement of
3 facts were behind it?

4 A. I don't, no, sir.

5 Q. Was this in any way being held over Mr.
6 Rennick's head, if you recall, at the time that he
7 entered his pleas?

8 A. I was aware that there was an
9 investigation concerning insurance fraud. I knew
10 there were investigations concerning the tractor
11 and a lot of things hanging over his head. I don't
12 remember that exactly in that manner.

13 Q. What necessitated or caused you to
14 receive a plea agreement that you executed in
15 October of '03?

16 A. I don't remember.

17 Q. Well, was it because Mr. Rennick was
18 trying to back out of the plea that he had entered
19 on August 18, 2003 and if he did so he would be
20 prosecuted for additional charges?

21 A. I don't think so.

22 Q. How do you know?

23 A. Because I don't remember Steve ever
24 telling me that he wanted to withdraw his plea.

25 Q. Mr. Rennick, Senior, never communicated

1 to you that he wanted to withdraw his plea?

2 A. He never told me to file a motion to
3 withdraw the plea. He never told me that he wanted
4 it undone, I mean, there were discussions about him
5 trying to better his situation, there were his
6 avoiding penitentiary. I don't remember him saying
7 we are done. Saying, I can't say he never said he
8 wanted to withdraw his plea. He never came to a
9 conclusion with me on that or I would have filed a
10 motion.

11 Q. Were you ever terminated as Rennick's
12 attorney?

13 A. Yes, I was.

14 Q. He terminated you?

15 A. Yes.

16 Q. Who did he hire to replace you?

17 A. Mr. Lawson.

18 Q. How did it come about?

19 A. After a sentencing hearing he showed up
20 with Ball in my office and told me that he wanted
21 the tapes that he provided me and he wanted
22 eventually for me to give all of the stuff to Mr.
23 Lawson. He was going to take his case and Mr.
24 Lawson was going to correct everything.

25 Q. Did you ever admit in the hallway of

1 the federal courthouse in Cincinnati that you had
2 not done your best effort on Mr. Rennick's behalf?

3 A. No.

4 Q. Did you ever tell him in the presence
5 of his sister that you had done things wrong in his
6 case?

7 A. No.

8 MR. GREGER: Can I have a moment,
9 your Honor?

10 JUDGE MERZ: Yes.

11 BY MR. GREGER:

12 Q. Can the witness be shown Exhibit 5,
13 please. Start at the bottom of four going to the
14 top of five. This has been marked and identified
15 as a sentencing transcript of Mr. Elliott so we've
16 got at the bottom of four top of five, in fact,
17 that Mr. Elliott was closest to Mr. Rennick.
18 That's what your recollection is as well, correct?

19 A. I'd agree with you, yes, sir.

20 Q. Mr. Elliott was able to get Mr. Rennick
21 to enter a plea, that's what you recall as well?

22 A. That's fair, I guess.

23 Q. Mr. Elliott's plea bargain and 5K1 was
24 based on what Mr. Rennick was to do, did you know
25 that?

1 A. No, sir. Wait, I'm sorry.

2 Q. Did you know that Mr. Elliott's plea
3 bargain included a 5K1 based on what Mr. Rennick
4 was to do?

5 A. My understanding Mr. Elliott would
6 receive some benefit if Mr. Rennick was able to
7 provide substantial assistance to the government.
8 That's my belief, yes, sir.

9 Q. So it was not your belief that a
10 portion of that substantial assistance was likewise
11 getting Mr. Rennick to plead?

12 A. That's correct.

13 Q. Go to page eight lines five through
14 nine. Did you know but for Mr. Elliott's efforts
15 none of this would have went on?

16 A. Did I know that?

17 Q. Did you know that?

18 A. No.

19 Q. Did you know that, in fact, the
20 government moved for a downward departure for Mr.
21 Elliott?

22 A. I believe I was told that at some point
23 by somebody.

24 Q. Mr. Lawson says on page 12 that you are
25 also in the room. We talked briefly before we came

1 up here and I want Mr. Brichler to know that is our
2 recollection about what happened that day. Is it
3 your recollection that what happened that day was
4 that Mr. Elliott was going to get the benefit of a
5 5K if he could convince Mr. Rennick to plead?

6 A. No, it was my recollection that Mr.
7 Elliott would receive the benefit of any
8 cooperation Mr. Rennick provided the government.

9 Q. Okay, so if Mr. Rennick didn't provide
10 substantial assistance to the government --

11 A. Correct.

12 Q. -- Elliott couldn't get a 5K?

13 A. Correct.

14 Q. And the government never filed a motion
15 for downward departure, 5K1 for Mr. Rennick?

16 A. That's correct.

17 Q. So how did Mr. Elliott, why did Mr.
18 Elliott get any benefit of that bargain if the
19 bargain, as you understood it, was that, in fact,
20 it all depended on the substantial assistance of
21 Mr. Rennick?

22 A. My understanding and not being present
23 at the time that occurred because there was a
24 break, I left, I went back to my office because my
25 sentencing was over with and I spoke with Mr.

1 Rennick and his family out in the hallway.

2 During the break was that Mr.
3 Lawson was claiming to have conversations with Mr.
4 Brichler that Brichler didn't recall. There was a
5 break. Elliott did whatever he did and Mr.
6 Brichler spoke. Whether Brichler asked for a
7 downward on the day of sentencing, I don't know.
8 You'll have to ask him that.

9 Q. It says in page 12 you were in the
10 room?

11 A. I was in the room what Mr. Lawson was
12 arguing for. There was no 5K motion at that time.
13 My understanding later on, Brichler gave some sort
14 of benefit. You told me Elliott got a reduction.
15 He got a reduction. I learned of that, why, I
16 don't know why Mr. Elliott got a reduction. I was
17 there when Mr. Lawson thought and argued that his
18 client was entitled to one.

19 Q. Well, if you are present on page 12 of
20 the transcript, aren't you likewise present on page
21 11 of the transcript?

22 A. Okay.

23 Q. Where Mr. Brichler moves for downward
24 departure on the basis of assistance in that case
25 and you were present when Mr. Brichler motioned for

1 it. It's not that you learned about it later.

2 A. I may have been in the room. I may
3 have been in the room when they argued about it,
4 maybe you are right.

5 Q. More than argued about it, you were
6 present because it comes on page 11 of the
7 transcript and we are on page 12. You are also in
8 the room. You were actually present when Mr.
9 Brichler moved for the downward departure based
10 upon Mr. Lawson's argument and the deal that was
11 struck on August 18, 2003?

12 A. I can't disagree, you say I was in the
13 room, it looks like I was.

14 JUDGE MERZ: At least Mr. Lawson
15 says you were, right?

16 THE WITNESS: Right.

17 BY MR. GREGER:

18 Q. And you talked briefly before they
19 meaning Mr. Elliott and Mr. Lawson came up there.
20 And Mr. Lawson --

21 A. That's what Mr. Lawson said. I have no
22 memory of talking to him on the day of. You are
23 correct that Mr. Lawson says he talked to me.

24 Q. And he represented to the court that it
25 was your joint recollection about what happened

1 that day, true?

2 A. You are correct, he did make that
3 representation.

4 Q. Have you ever corrected the record made
5 before Judge Dlott in that regard that A, you
6 weren't in the room, two, Mr. Lawson's
7 representation of your recollection is in error?

8 A. Being this is the first time I've ever
9 seen this transcript, no, sir, I've not. I don't
10 know if it needs to be corrected as I sit here
11 today.

12 Q. The next lines, 11 through 14 --

13 A. Which page?

14 Q. Page 12. Mr. Brichler said and I want
15 to make it clear, that this motion for reduction is
16 based upon what happened that day and is not based
17 upon any conduct that Mr. Rennick subsequently
18 engaged in. Does that refresh your recollection
19 about what the offer was to Mr. Elliott?

20 A. I wasn't party to a conversation with
21 Mr. Elliott and Mr. Brichler or Mr. Lawson and Mr.
22 Brichler. So I don't know there is anything that
23 refreshes my memory about an agreement that I
24 wasn't party to, I don't believe.

25 Q. Wouldn't it have been important to find

1 out what Mr. Elliott's incentives were when you
2 gave him consent to talk to your client on at least
3 one and perhaps two occasions on August 18, 2003?

4 A. Being they were good friends like that,
5 no, I didn't think so.

6 Q. Until today's date, you never knew that
7 Mr. Elliott had a deal with the government that if
8 Mr. Rennick and only if Mr. Rennick pled guilty was
9 he going to get a benefit; is that true?

10 A. If you are assuming I wasn't in the
11 room on the day of the sentencing then that would
12 be true. I don't remember being at a hearing by
13 Mr. Lawson on the day of the sentencing, but that
14 would be true.

15 MR. GREGER: I have nothing
16 further of this witness.

17 JUDGE MERZ: Cross?

18 CROSS EXAMINATION

19 BY MR. GLASSMAN:

20 Q. A few points. In preparing for the
21 case at some point you would have reviewed the
22 criminal complaint that was filed upon the initial
23 arrest?

24 A. Yes, sir.

25 Q. And so you would recall if that

1 criminal complaint, you would have read that the
2 affidavit in support said that 450 pounds of
3 marijuana was seized from any one side of a locked
4 area of the warehouse?

5 A. If that's what is in the complaint.

6 I'm sure --

7 Q. Would you recall if the criminal
8 complaint says that Rennick, Senior had a key to
9 the locked area?

10 A. If it's in the complaint, yeah.

11 Q. And would you recall that according to
12 the criminal complaint Steve Rennick, Senior stated
13 he transported the boxes containing the marijuana
14 in a truck from Arizona to Cincinnati?

15 A. Yes, sir.

16 Q. Prior to the date on which Mr. Rennick
17 entered a change of plea and decided to plead
18 guilty, had you told him about a mandatory minimum?

19 A. Yes, sir.

20 Q. You had told him there was a mandatory
21 minimum penalty?

22 A. Yes, sir.

23 Q. During the change of plea hearing, did
24 you tell Mr. Rennick at any point that he was
25 entering a fictional plea?

1 A. No.

2 Q. So there was no time during the plea
3 hearing when Mr. Rennick either turned to you or
4 waited for your advice and you whispered in his
5 ear, don't worry, you must do this, this is just a
6 fictional plea?

7 A. That's correct, I never said that.

8 Q. Now, I know that you discussed earlier
9 on the plea negotiations or the initiation of plea
10 negotiations on the morning that trial was set to
11 begin?

12 A. Yes, sir.

13 Q. And would it be accurate to say that
14 your testimony was that the government was not
15 interested in entering into plea negotiations
16 unless all three defendants were to plead guilty?

17 A. That's correct.

18 Q. Now, the plea agreement that you
19 ultimately reached with the government, that was
20 entered as record in this case, did that plea
21 agreement depend on the government giving favorable
22 treatment to any of the other co-defendants?

23 A. I think Mr. Rennick would have always
24 been able to plea to the conspiracy count. So, you
25 know, his ability to plead to the conspiracy wasn't

1 necessarily conditioned on the other two entering
2 the plea.

3 Q. I'm asking an even simpler question, I
4 think, so the three defendants entered three
5 agreements?

6 A. Right.

7 Q. Let's say one of the other ones other
8 than Mr. Rennick sought to withdraw his plea and
9 withdrew his plea, just imagine that hypothetical.

10 A. Okay.

11 Q. Would Mr. Rennick have been entitled to
12 withdraw his plea on that basis?

13 A. Did, they all entered their pleas and
14 now one wants to go forward and no longer wants to
15 go to trial?

16 Q. Let's say they entered the plea as
17 happened and sometime down the road one of the
18 others withdraw their plea. Would Mr. Rennick have
19 been entitled to withdraw his plea on the basis
20 that somebody else withdrew their plea?

21 A. I think it would have, that would be an
22 interesting argument. I think if you wanted to
23 make it, I'd certainly attempt to make it. I mean,
24 one of the reasons that Steve wanted to enter the
25 plea that day, he saw favorable treatment for two

1 people he cared about. That was, I'll agree, that
2 was a motivating factor for Mr. Rennick to enter a
3 plea was his concern for Elliott and Benjamin's
4 futures.

5 Q. Sure. All right, let me ask it this
6 way. The plea agreement that was written and read
7 into the record?

8 A. Okay.

9 Q. Was that accurate?

10 A. I'd agree it was, yeah.

11 Q. During the course of plea negotiations,
12 did you at any point meet with the other defense
13 lawyers and Mr. Elliott and Mr. Brichler, perhaps
14 Mr. Benjamin, but everyone except for Mr. Rennick
15 and come up with a plan to get Mr. Rennick to plead
16 guilty?

17 A. No.

18 Q. Did Mr. Brichler ever present to you
19 any sort of plan or strategy to tell you that you
20 had to get Rennick to plead guilty one way or the
21 other?

22 A. No.

23 Q. Was it your understanding that Rennick
24 entered his plea voluntarily?

25 A. Yes.

1 Q. It was not the result of any threat or
2 coercion?

3 A. Correct.

4 Q. After Rennick pled guilty and was then,
5 actually, I'm sorry. Prior to the time that he
6 formally entered the guilty plea when you were in
7 plea negotiations, did you discuss the idea of
8 cooperation?

9 A. Yes.

10 Q. You discussed that with Rennick?

11 A. Yes.

12 Q. And Rennick said he'd try to cooperate?

13 A. Correct.

14 Q. And subsequent to the entry of the
15 guilty plea, did Rennick, in fact, go on about the
16 cooperation?

17 A. Yes, sir.

18 Q. And did he tell, and he was in frequent
19 contact with you throughout this time?

20 A. Yes, sir.

21 Q. Did he ever say I want to withdraw my
22 guilty plea?

23 A. As I said earlier it sounds weird as a
24 conclusion, no, I've had lots of discussions with
25 lots of clients who has a buyers remorse, I think

1 I'm withdrawing my plea. What do you, we've
2 discussed that. I can't say that he never said it
3 to me after conclusions of discussions with hey,
4 I'm done with this, get me out of this, no. I hope
5 that makes some sense.

6 Q. Sure. Prior to the sentencing hearing,
7 did you discuss the PSR with Rennick?

8 A. Yes.

9 Q. So he had seen the PSR prior to the
10 sentencing hearing?

11 A. Uh-huh. Yes, I'm sorry.

12 Q. Did you discuss with him what you were
13 going to argue at the sentencing hearing?

14 A. Yes, sir.

15 Q. Did you tell him that you would get
16 Brichler to file a 5K1.1 for substantial
17 assistance?

18 A. No, sir.

19 Q. You did not tell him that?

20 A. No, sir.

21 Q. What did you tell him?

22 A. I told him that he was not going to get
23 the benefit of a 5K1 motion. I had lots of
24 discussions with Rennick, Brichler, with Mercado
25 and about the plea and the progress of his

1 cooperation. Mr. Brichler and Agent Mercado
2 expressed on one occasion that they did not think
3 that what Mr. Rennick was doing amounted to
4 substantial assistance.

5 Mr. Rennick and I had a
6 conversation in short time before answering. It
7 was within days or a week or so about what I
8 thought was a better course. I was somewhat
9 concerned about the tapes. I wasn't completely
10 satisfied with them. They were all in essence one
11 sided types. Mr. Rennick was recording his voice
12 essentially. And you can't force the government to
13 file a 5K1 and he wanted me to try to force them.

14 I don't believe that the case law
15 supports my ability to force the government to file
16 a 5K1.1 or have a hearing on what did amount to
17 substantial assistance for a judge to order the
18 government to file one. I didn't think that was it
19 and I explained that to Steve.

20 Q. You explained that to him before the
21 sentencing hearing?

22 A. I explained to him what I wanted to
23 attempt to do is mitigate the circumstances about
24 his military history. We gave to the judge the
25 entire, I don't know how much VA record she had. I

1 don't know if she had all or some of it. She had
2 our sentencing memorandum, but we had discussed all
3 of the choices and I told him what I thought was in
4 his best interest.

5 Q. And what did he say in response to
6 that?

7 A. I think he still thought that somehow
8 we can enforce some sort of contract relationship
9 in what he had done was substantial assistance and
10 he didn't agree with that tactic. I don't think he
11 agreed with that tactic.

12 Q. Let's see, what was handed to you and I
13 believe marked as Defendant's Exhibit 14?

14 A. Yes, sir.

15 Q. Did I hear you correctly that you don't
16 have any independent recollection of this document?

17 A. I'm trying to remember the
18 circumstances of this and I'm sorry, I don't, I
19 just really, really don't.

20 Q. Turning to the last page of that
21 document.

22 A. Yes, sir.

23 Q. The signature page?

24 A. Yes, sir.

25 Q. Does appear to have your signature on

1 that page?

2 A. Yes, sir, it does.

3 Q. In your experience in dealing with plea
4 agreements from the U.S. attorney's office for the
5 Southern District of Ohio, are the signature pages
6 particularly blank, in other words, there is
7 nothing on a page other than signatures or do they
8 typically start by saying this is the entire plea
9 agreement, there are no other agreements besides
10 this?

11 A. I would say it's normally the latter.

12 Q. Did, I believe, I heard your testimony
13 that you did not ever solicit Rennick to pay you in
14 cash for your services?

15 A. That would be correct.

16 Q. Did you ever, just following up, did
17 you ever specifically say, I would like you to pay
18 me in cash that I can take a trip to Colorado, I
19 need to go, I need the cash to go to Colorado?

20 A. No.

21 Q. To the best of your knowledge, you were
22 representing Rennick throughout the course of the
23 proceedings until Rennick terminated your
24 representation?

25 A. Yes, sir.

1 Q. And Elliott had separate counsel?

2 A. Correct.

3 Q. And Benjamin had separate counsel?

4 A. Yes, sir.

5 Q. And there was no plot that you were
6 involved in at the behest of the United States
7 attorney's office to force Rennick to plead guilty?

8 A. That would be fair.

9 Q. And, again, your best understanding is
10 that Rennick pled guilty as a free and voluntary
11 act, his own choice?

12 MR. GREGER: Objection, your
13 Honor, asked and answered.

14 JUDGE MERZ: Overruled.

15 THE WITNESS: Yes, sir, I do
16 believe that.

17 MR. GLASSMAN: No further
18 questions.

19 JUDGE MERZ: Thank you. Redirect?

20 REDIRECT EXAMINATION

21 BY MR. GREGER:

22 Q. Thank you, your Honor. Do you still
23 have Exhibit 14 in front of you, Mr. Gallagher?

24 A. I do.

25 Q. What does paragraph 13 state?

1 A. Hang on just a second.

2 JUDGE MERZ: 13 or 15?

3 MR. GREGER: I'm referring to the
4 plea agreement that was signed by Mr. Gallagher.

5 THE WITNESS: Talking about
6 Exhibit 14 and now paragraph 13 of that is --

7 BY MR. GREGER:

8 Q. That's exactly right.

9 JUDGE MERZ: Beg your pardon?

10 Q. I apologize. Paragraph 15 page three
11 of that exhibit.

12 A. Right.

13 Q. Read that into the record.

14 A. This written agreement embodies all of
15 the agreements and understandings between the
16 United States attorney for the Southern District of
17 Ohio and the defendant. No conversations,
18 discussions, understandings, or other documents
19 extraneous to the agreement shall be considered
20 part of this agreement.

21 Q. Is that what Mr. Benjamin was referring
22 to?

23 JUDGE MERZ: Mr. Benjamin or Mr.
24 Glassman?

25 MR. GREGER: Glassman.

1 BY MR. GREGER:

2 Q. Typically appearing on a page of a plea
3 agreement in the Southern District of Ohio?

4 A. What we see, we normally see something
5 like that on the signature page. You'd see the
6 signature page. That's what you would see most,
7 yes, sir.

8 Q. In this case, the signature pages just
9 went to page four because they couldn't fit it on
10 page three?

11 A. That appears to be the case, you are
12 correct.

13 Q. How do you know whether or not
14 coercion, force, pressure, was brought to bear on
15 Mr. Rennick by the government's agent Mr. Elliott
16 if you weren't privy to the conversations?

17 A. All I --

18 MR. GLASSMAN: Objection.

19 JUDGE MERZ: Sustained.

20 Characterization, form of the question.

21 BY MR. GREGER:

22 Q. You now understand because you were in
23 court that the government rewarded Mr. Elliott for
24 his efforts on the day of the change of pleas,
25 correct?

1 A. It appears that way. The only other
2 thing I can tell you, Mr. Greger, is this. In the
3 Southern District of Ohio it would be routine at
4 times in order to facilitate a plea to give people
5 just sort of credit for pleading and what I mean by
6 that is this. Which is, look at, we've had
7 situations where people got 5K's sort of cross
8 fingering each other where they didn't provide
9 substantial assistance to the government, but the
10 two of you were basically allowed to get the
11 benefit of each other pleading.

12 I don't know if that's the case or
13 it was Mr. Elliott had to do some undue pressure to
14 Mr. Rennick. I don't know which two circumstances
15 it was, you're right.

16 Q. One of the two circumstances could
17 exist because you were not privy to the
18 conversations between Elliott and Rennick?

19 A. I'd agree with you.

20 Q. And the government favored Mr. Elliott
21 by a downward departure or really moved under 5K1
22 only because of what Mr. Elliott did on the morning
23 of the pleas and nothing that Mr. Rennick did after
24 the pleas, correct?

25 A. That appears to be the case, yes, sir.

1 Q. Do you recall in your investigation of
2 this matter whether or not the lock that secured
3 the locked area of the warehouse had, in fact, been
4 cut off so that no keys were necessary?

5 A. Wow. I know they executed a search
6 warrant. I don't know how the thing was opened.
7 That's very possible, yes, sir.

8 Q. Mr. Gallagher, do you believe every
9 affidavit that's attached to a criminal complaint?

10 A. No, sir.

11 MR. GREGER: Thank you, I have
12 nothing further.

13 JUDGE MERZ: Recross?

14 RECROSS EXAMINATION

15 BY MR. GLASSMAN:

16 Q. One brief question. After Rennick and
17 Elliott had their conversation that you alluded to
18 on the change of plea?

19 A. Yes.

20 Q. After that point your view was that
21 Rennick wanted to enter a plea agreement as his own
22 free and voluntary choice?

23 A. That would be yes.

24 MR. GREGER: No further questions.

25 JUDGE MERZ: Thank you. Mr.

1 Gallagher, you may step down and you are excused.

2 THE WITNESS: Thank you, sir.

3 JUDGE MERZ: The understanding
4 that the Petitioner has no additional witnesses to
5 call; is that correct?

6 MR. GREGER: It's correct. We move
7 for admission of Exhibits 1 through 14.

8 JUDGE MERZ: Any objection, Mr.
9 Glassman?

10 MR. GLASSMAN: No, sir.

11 JUDGE MERZ: Does the Petitioner
12 rest?

13 MR. GREGER: They do, your Honor.

14 JUDGE MERZ: Any evidence on
15 behalf of the United States?

16 MR. GLASSMAN: No, sir.

17 JUDGE MERZ: Mr. Greger, does the
18 Petitioner desire an opportunity to brief this
19 matter.

20 MR. GREGER: You know, your Honor,
21 I think I do and I may ask for additional judicial
22 notices be taken in that briefing as to what or was
23 not filed as a matter of record in the docket of
24 the court.

25 JUDGE MERZ: How much time would

1 you need to prepare that memorandum?

2 MR. GREGER: Judge, I'm presently
3 scheduled to start trial with Dlott April 4th.
4 That's four solid weeks except for the week of the
5 14th. She's going to be in chief judge training
6 school and then we get back and start again. That
7 case is not resolved. I don't know how quickly the
8 transcript will be ready, but I can't possibly file
9 anything with this court until the middle or end of
10 June. I just can't.

11 JUDGE MERZ: June 15, 30, you
12 pick.

13 MR. GREGER: June 30th.

14 JUDGE MERZ: June 30th it is. The
15 transcript will be prepared for the use of the
16 court and copy provided to both Mr. Glassman and
17 Mr. Greger. Mr. Glassman, do you need more than
18 30 days to respond?

19 MR. GLASSMAN: That's fine, your
20 Honor.

21 JUDGE MERZ: Very good. We are in
22 recess.

23 MR. GREGER: Thank you, your
24 Honor.

25 JUDGE MERZ: For the record, the

1 writ of habeas corpus testificandum for Mr. Rennick
2 is dissolved and he's returned to custody.

3 (Hearing adjourned at 5:35 p.m.)
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C E R T I F I C A T E

I, Paula A. Blosser, a Registered Professional Reporter and Notary Public do hereby certify that the foregoing is a full, true and correct transcript of my notes taken in the above-styled case and thereafter transcribed by me.

 /s/ Paula A. Blosser
Paula A. Blosser, RPR